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Edited by Daniel J.B. Mitchell

UCLA Luskin School *of* Public Affairs

Lewis Center

California Policy Options 2016
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Preface

The 2016 edition of *California Policy Options* once again provides a timely collection of research and policy recommendations on issues and opportunities facing California. The annual publication advances research solutions for California's urban and regional challenges. These range from the state economy to leadership and voter issues such as taxes, health and safety, education, transportation, housing and the environment.

Professor Daniel J.B. Mitchell, longtime editor of the annual series, has again collected and edited a new list of California-focused articles. The current volume and past editions serve not only as a resource for researchers, journalists and citizens, but also as an important source of readings for our undergraduate class on California policy issues. The course is taught each winter quarter by Professor Mitchell and Visiting Professor of Public Policy Michael Dukakis.

California Policy Options exemplifies many of the values and goals of the UCLA Luskin School of Public Affairs and the Lewis Center: working across academic boundaries, addressing a wide range of pressing state issues, and providing empirical analysis of the state's public policy problems from a variety of viewpoints.

Lois Takahashi

Interim Dean

UCLA Luskin School of Public Affairs

Introduction

In past editions of *California Policy Options* following the Great Recession of 2008, economic and budgetary matters tended to dominate the policy conversation. But with such concerns receding (although not vanishing), other matters tend to come to the fore. Environmental concerns, for example, have become prominent, especially since Governor Jerry Brown has enthusiastically inherited two initiatives begun during the regime of his predecessor, Arnold Schwarzenegger. One of these involved air pollution, particularly in its greenhouse gas variant. The other involved transportation, a high-speed rail connection between Southern California and the Bay Area.

Air pollution issues became a major public policy concern during World War II, as attacks of bad air became commonplace in the Los Angeles area. As Daniel J.B. Mitchell's chapter on smog reminds us, there was a time when the sources of the pollution were debated. And the notion that controlling air pollution could not be left to individual localities became evident, in large part thanks to a *Los Angeles Times* campaign in 1947 that established a regional control agency. By itself, that step didn't end smog but it began the modern approach to air pollution control.

It took time for the connection between automobiles and air pollution to be made. And nowadays various efforts are underway to encourage alternative modes of transportation besides the car. We tend to think of mass transit as THE alternative. But there are others. One of these is greater use of bicycles. Various local jurisdictions are trying to make their streets more bicycle-friendly and safe. As Tongxin Xu, Narek Sarkisyan, Naoki Yamazaki, and Jeremy Fuller note in their chapter, finding ways to make automobile drivers more cognizant of cyclists trying to share the road is an important part of such efforts. As they point out in a study originally conducted for the City of Santa Monica, not all road markings are equally effective in encouraging safe road sharing. Some are more effective than others.

California's population is changing and it is often said that its demographics are a forerunner of the U.S. of the future. But as Daniel Friess points out in his chapter, not all groups within the population are equally represented in the political structure. There is the obvious point that non-citizens can't vote. But even those who are citizens and are eligible to vote do not necessarily turn out to do so. While it is not possible to assure that all groups will choose to participate equally in the political process, Friess notes that there are policies that can encourage higher voter turnout.

Demographics can also affect access to health care, particularly for immigrant populations without legal status. The 2016 presidential campaign has featured controversy over various immigration policies at the federal level, intensified after the November 2015 Paris attacks by concerns about terrorism. When you add the ongoing controversy about "Obamacare" (the Affordable Care Act) to the mix, the intensity of the debate escalates. In their chapter about the expansion of health care to immigrant groups, Laurel Lucia, Xiao Chen, Ken Jacobs, and Nadereh Pourat explore a methodology for estimating the California impact of potential changes in federal policy with regard to health care coverage. (Whether such policies can ultimately be implemented will depend on the outcome of litigation and the 2016 presidential election.)

Although, as noted, economic and budgetary concerns have tended to recede, California is still subject to the ups and downs of the larger national business cycle and to its own internal economics. Jordan G. Levine and Christopher Thornberg examine the immediate economic outlook for California in their chapter and see no signs of an impending recession. Even the housing market, which played a major role in creating the Great Recession, seems to have become a positive element in the short-term outlook. But Levine and Thornberg point to longer-term structure problems which California has yet to resolve. These include concerns about housing affordability and sluggish creation of middle-income jobs.

With an improved economy, California's fiscal climate is notably different from what it was only a few years back when it lurched from budget crisis to crisis. As Daniel J.B. Mitchell points out in his annual state budget chapter, Governor Brown after taking office in 2011 was mainly focused on dealing with the budget crisis he inherited from his predecessor. Ultimately, a combination of an improved economy and the enactment of Proposition 30 – which added some temporary income and sales tax revenue – turned around the budget outlook. With his re-election in 2014, Brown seems to have become focused on “legacy” issues. One of these legacies is a complicated “rainy day” fund he persuaded voters to enact along with his re-election in 2014. But other Brown priorities are reflected in the budget such as funding for his high-speed rail project. More generally, the governor has sought to retain his image as a fiscal conservative protecting the state from over-spending tendencies of the legislature.

Brown, of course, was also governor in the 1970s and early 1980s. One of his inadvertent legacies of that period was voter enactment of Proposition 13 of 1978, a drastic cut back and limitation of local property taxes. Although voters were primarily focused on home assessments and taxes, Prop 13 applied to all property, commercial as well as residential. As Kirk Stark notes in his chapter, there has been periodic pressure to revise the Prop 13 system to separate commercial property from single-family residences, a so-called “split roll.” The issue arises because the Prop 13 methodology essentially reassesses property to market value only when the property is sold. Residences trade hands in a simple unambiguous fashion; someone sells a house to someone else. Business property, however, is owned in complex ways that can mean that property effectively passes to new owners but legally remains in the hand of some entity and thus no reassessment occurs. Stark notes that the current system creates incentives to split commercial ownership between land and structures, producing economically inefficient consequences of tax avoidance.

Our final chapter deals with a crime issue or, more properly, what should be a crime when it comes to sex trafficking of minors in Los Angeles County. Morgan Sokol, Rocio Bonsall, and Begoña Guereca note that under current legal arrangements, the minors involved are often criminalized along with the traffickers. An alternative approach would be to regard the minors as victims, not criminals, a step the authors advocate. Various interventions to assist the minor-victims are needed. And policies that discourage demand for sex services such as “john schools” are recommended.

We thank our chapter authors for their contributions to *California Policy Options 2016* and also extend our thanks to Stan Paul who handles its production and distribution.

Daniel J.B. Mitchell

CHAPTER 1

Clearing the Air: What the Times Called for in 1947

Daniel J.B. Mitchell

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Nowadays, we think that good journalism means separating the editorial page from news reporting. Editorials are by their nature opinion pieces, although they are usually based on news items. News reporting, in contrast, is supposed to be “neutral.” Indeed, modern day journalists – while often soliciting opinions of experts and pundits – will go out of their way to find someone with a contrary view and will attempt to reflect both sides of any question. Even when exposing some social wrong, the emphasis in reporting is on laying out facts and letting readers draw their conclusions. That’s the ideal, anyway.

Of course, it is sometimes argued that there is no true neutrality and that news reports inevitably contain slants on covered events, even if the intent is neutrality. However, if we go back in time, the notion of neutrality and separation of editorial from news reporting as the key to good journalism was not so firmly ensconced. In particular, for decades after its founding, the *Los Angeles Times* in both opinion and reporting represented the (generally conservative) views of its owners – the Chandler family – and their designated family-member/publisher.¹

Given the impact of the Internet on newspaper publishing, it may be hard for contemporary readers of this chapter to appreciate that the *Times*’ mix of blended reporting and opinion was highly influential in local and state politics back in the day. Although the *Times* did not always get its way on public issues, its endorsements of candidates and legislation mattered a great deal. The *Times* represented the positions of a downtown business elite in Los Angeles that had its view of the way things should be done and run.

An important element in *Times*’ policy was promoting economic development of the Los Angeles area, i.e., boosterism. While boosterism might not be seen as good journalism today, the popular movements for “slow growth” that emerged in the 1970s and beyond in Los Angeles were not much in evidence before that decade. Boosting the local economy was a normal thing for newspapers to do, not just in LA.

Growth and development were naturally hindered by the Great Depression of the 1930s, so anything that might aid the local economy back then would likely have been viewed as a Good Thing by most readers. World War II produced economic advance in the LA area and throughout California in the early 1940s at a pace that could hardly have been imagined just a few years before. But when the War came to an end, there were fears that the Depression would re-emerge. In 1947, although the Depression had not returned, there was still residual nervousness about the economy. Children in that year were listening to a newly-released MGM phonograph record about “*Irving, the Unemployed Horse*” and how he eventually landed a job with Santa Claus.

At the state level, the postwar period posed challenges to California in terms of infrastructure, education, health care, and social welfare spending. Then-Governor Earl Warren in 1947 championed a fiscal blueprint for the soon-to-be-developed freeway system. He also pushed for

¹Bill Boyarsky, *Inventing L.A.: The Chandlers and Their Times* (Santa Monica, CA: Angel City Press, 2009).

a kind of state-level universal health care.² Ultimately, he got his roads but not his health program. But while roads and health care might seem to be a full agenda for public policy, there were other issues on the table in 1947, too.

One of these issues was smog. Smog, however, was seen as a local and regional issue centered in the Los Angeles area about which the state's governor could not be expected to take the lead. But what should be done about smog was clearly an issue on which the *LA Times* could be expected to have a position since the bad air was a major concern in its marketing area. Even if smog was not something directly felt in Sacramento, *Times* readers were experiencing it on a daily basis.

An interesting question is what you might have expected the *Times'* position on smog abatement to have been. Obviously, no one would favor having smoggy air. So would the *Times* favor aggressive regulation and controls, an approach often seen as interfering with business? Aggressive regulation, you might think, would not be the choice of the *Times*. If there was to be some form of regulation, would the *Times* favor doing something about smog on as local a level as possible as opposed to empowering some broader regional authority? Again, one might have guessed that local (mainly municipal) control rather than some broader regulatory authority would have been favored as a more conservative approach.

But if you chose both guesses, plausible though they may seem as the *Times'* likely positions, you would be wrong. The surprising answer is that the *Times* management – once it decided that smog had to be dealt with – favored an aggressive regulatory approach and one based on a regional, not a local, basis. Indeed, as will be described below, the *Times* in 1946-1947 engineered a *successful* campaign to create a county-wide regulatory authority with broad power. It was a campaign that required action by the legislature to pass a bill and the governor to sign it.

In undertaking the campaign, the *Times* made little distinction between its news reporting and its editorial position; one history of smog abatement in LA refers to the campaign waged by the *Times* politely as “patchy reporting.”³ With hindsight, we know that the *Times'* burst of journalistic activism didn't end smog in LA by any means. The smog crisis – not too strong a phrase – characterized the LA area for decades thereafter until major progress was finally made. But the *Times'* campaign did represent what has to be regarded as a major first step toward strong, regional regulation to clean up the air. Indeed, the agency that was created at the *Times'* behest in 1947 is a parent of the current South Coast Air Quality Management District.

²Daniel J.B. Mitchell, “Earl Warren's Fight for California's Freeways: Setting a Path for the Nation,” *Southern California Quarterly*, Summer 2006, pp. 205-238, and Daniel J.B. Mitchell, “Impeding Earl Warren: California's “Health Insurance Plan That Wasn't and What Might Have Been,” *Journal of Health Politics, Policy, and Law*, December 2002, pp. 947-976.

³Chip Jacobs and William J. Kelly, *Smogtown: The Lung-Burning History of Pollution in Los Angeles* (New York: Overlook Press, 2008), p. 29.

As to why the *Times* took on the smog issue in the way that it did, we can only speculate. Norman Chandler, the third in the series of family patriarchs who ran the *Times*, took over as publisher in 1941 at a time when the paper faced financial difficulties and was slipping in circulation relative to its rivals. However, no one liked breathing smog including readers and potential readers. Perhaps he thought that a campaign against smog would boost sales. Or maybe he just didn't like looking across the street from the *Times'* headquarters building at City Hall and barely being able to make out its smog-obscured outline. Norman later gave his wife the credit for goading him into the anti-smog campaign.⁴ In the end, all we can do is describe the *Times'* actions, whatever the motivation behind them.

The Developing Perception of Smog

The word "smog" is an amalgamation of "smoke" and "fog" and is often thought to have originated in the coal-related air pollution of London in the late 19th and early 20th centuries.⁵ American cities, particularly where there was heavy industry and coal burning for energy and heating were also prone to smog problems in that older sense of the word. There was a strong association in the minds of the public and civic authorities between smoky emissions that could be easily seen and smog problems that produced burning eyes and respiratory distress in southern California. The villains in smog were therefore emitters of visible smoke and the solution was to force them to clean up their emissions.

When it comes to Los Angeles today, however, we tend to associate smog with automobiles. Under modern regulations, autos must be periodically checked at smog stations and control devices such as catalytic converters are required. But car exhaust is generally not black and smoky, even if unfiltered. So the kind of air pollution caused by automobiles in the Los Angeles area results from a complicated chemical reaction related to climate and geographical conditions in southern California. But since there is typically no black smoke to be seen in LA's "photochemical smog," the link between autos and smog was not initially understood and remained a matter of debate.

The automobile connection was also obscured by contemporary events. Smog became a major issue in the LA area during World War II as wartime factory production increased rapidly. So there was at least a correlation between the onset of smog and the new and expanded factories. At the same time, driving was curtailed by wartime gasoline rationing. The still-extensive public transit system (mainly streetcars) – which had been in decline – experienced a temporary increase in ridership. So the link to auto emissions was not obvious. (And, of course, stationary sources such as factories *were* an important component of bad air.)

⁴Bill Boyarsky, *Inventing L.A.: The Chandlers and Their Times* (Santa Monica, CA: Angel City Press, 2009), p.106.

⁵This section is based heavily on the transcribed interview with Frank M. Stead which appears in "Earl Warren and the State Department of Public Health," a volume of the Earl Warren oral history project, and available at http://digitalassets.lib.berkeley.edu/roho/ucb/text/ew_pub_health.pdf.

It was also unclear once smog became a perceived problem whether it was just an annoyance or a public health issue. And even if smog were seen as unhealthful, it was unclear *who* should do something about it. There were public health officials in LA County in the 1940s, but their traditional role at that time involved combatting diseases. No known smog diseases existed. The burning eye sensation was unpleasant but it wasn't a disease; it would go away when the smog lifted. And unlike, say, tuberculosis, whatever was the cause of smog, it wasn't germs. For that reason, public health officials tended to view smog as outside their jurisdiction. They didn't see themselves as being responsible for controlling smog or even doing research on its effects.⁶

Despite this tendency in the public health community, there were some precedents in the field of industrial hygiene that did involve public health. Various adverse health effects from chemical exposures through fumes *within* the workplace had been studied. So if the same fumes were escaping into the general atmosphere that caused health problems within the workplace, similar health issues might potentially arise for the general public.

As noted, once the U.S. entered World War II – and even just before during the period of military preparedness – there was a huge buildup of industrial activity in the LA area. The aircraft (later aerospace) industry began to flourish, but so did many other ancillary industries. Concerns about chemical exposure rose with the rapid industrialization. So maybe smog was more than an annoyance. And maybe it could be studied outdoors in the same way that industrial exposure had been studied indoors. These ideas began to meet a more receptive response as the smog problem grew.

There was also a parallel with water pollution. The dumping of raw sewage into the ocean was known to be a hazard for swimmers and, of course, bacteria – a traditional public health concern – were involved in that type of pollution. So there were controls gradually imposed by the state – not without resistance – requiring local authorities to treat sewage. Controls were extended to the dumping of industrial waste, too, including dumping that affected ground water (which might be consumed by the public as drinking water). If it was wrong to dump into water, and if such dumping was seen as a threat to public health, the idea of “dumping” into the air could also be seen as an activity that needed to be controlled.

The War Years: 1940-1945

Generally, histories of smog in LA report the first major smog attacks – not too strong a word – as occurring in the World War II period.⁷ Before that, periodic problems of smoke in the air

⁶Examination of topics under “Public Health” in the Earl Warren Papers of the California State Archives reinforces this assertion. Typical subjects of internal documents involve tuberculosis, polio, cancer, pest control, venereal disease, maternal health, hospital construction, handicapped children, and sewage treatment. Air pollution is rarely mentioned; water pollution is somewhat more frequently referenced. Individual citizens from the LA area did write letters complaining of smog to Governor Warren and received polite letters of acknowledgment or referrals to local authorities.

⁷Kevin Starr, *Golden Dreams: California in an Age of Abundance, 1950-1963* (New York: Oxford University Press, 2009), pp. 259-261.

were reported going back into the 19th century and early 20th century but nothing on the scale that began during the war.⁸ As a result, there were some local ordinances enacted aimed at excessive smoke emissions in the prewar period but enforcement was limited and sporadic. Smog was not an ongoing event and tended to be viewed as a freak occurrence when it appeared before World War II. In any event, air pollution does not stay neatly within city lines so local (municipal) controls from the prewar area were bound to be ineffective when confronted with area-wide wartime production and population increase.

The U.S. did not enter World War II formally until the Pearl Harbor attack of December 7, 1941. But production was ramping up before as part of the Lend Lease program to aid Britain and increased American preparedness. Congress enacted the draft in September 1940. But two months before that enactment, a short item appeared on the back pages of the *LA Times* that a problem of “mystery fumes” producing a burning sensation of the eyes was reported in the Civic Center. An investigation was promised by city authorities.⁹ [July 10, 1940] Apparently, however, the problem cleared up quickly and disappeared from public attention.

It is important to recall that public enthusiasm for the War was intense after Pearl Harbor and the *Times* would have seen its patriotic duty as supporting the war effort. As long as the problem of “fumes” was sporadic, and to the extent it was seen as connected to military production, fussing about an occasional unpleasantness would not have been seen as the thing to do. You were initially more likely to find basic news stories about the War itself or items seen as supporting the War than complaints about air pollution. A little over half a year into the War, for example, the *Times* provided helpful hints on how to look pretty for women who had been pulled into non-traditional factory work. As the *Times* put it, the “Molly Pitchers of 1942” did not have to give up their pursuit of “good looks.” [June 28, 1942]

By 1943, however, reluctance to criticize polluters was fading, particularly when a specific villain could be found. Southern California Gas, the big utility, was operating a plant producing synthetic rubber that came to be seen as the source of irritating fumes. (Sources of natural rubber had been cut off by the war; the imposition of wartime gasoline rationing was seen as an indirect way of reducing demand for rubber tires.) The production was taking place under federal government supervision and an official was called from Washington to investigate. He gave assurances that the problem would be resolved and that, in any case, no health danger was involved. [September 15, 1943] The LA City Council became involved and its members were given assurances that there would be “an effort to keep existing nuisances at a practical minimum, consistent with the best interests of the citizens of Los Angeles and the war effort.” [September 23, 1943]

⁸James E. Krier and Edmund Ursin, *Pollution and Policy: A Case Essay on California and Federal Experience with Motor Vehicle Air Pollution, 1940-1975* (Los Angeles: University of California Press, 1977), pp. 45-46.

⁹When particular *LA Times* articles are cited after this point, the date will be shown in the text in brackets []. Interested readers can access the articles using the dates shown through the ProQuest Historical Newspapers database.

Shortly thereafter, however, the plant temporarily shut down after a “new fume outbreak” occurred. [October 1, 1943] And soon after that event, a Grand Jury called in the mayor of LA and the city council president to hear about attempts to control the “menace.” But there began to be suspicion that the rubber plant was not the sole cause of the “acid fumes and smoke” that was distressing the public. Perhaps, it was suggested, the problem had to do with other factories using oil for boilers rather than natural gas. [October 8, 1943] No one was quite sure.

Nonetheless, the focus remained on the rubber plant and the LA city attorney filed for an injunction to stop production there. Federal officials continued to focus on the need for the plant to operate as part of the war effort, an assertion that LA Mayor Fletcher Bowron questioned. [October 18, 1943] For a time, the plant apparently started and stopped production in response to wind conditions; when it was thought winds would blow its emissions away, production was increased. [October 23, 1943]

At the time of the rubber plant controversy, the *Times* took the position that in view of the war effort and promises by plant officials to install cleaner equipment, the City’s lawsuit should be dropped (and it was). [October 28, 1943] Attention began to turn to other sources of air pollution. Public buses, then in private hands, were said to be burning low quality diesel fuel because of wartime diversions. The bus operator pushed for better quality fuel to be made available “in the interests of maintaining essential public transportation.” [December 6, 1943]

By 1944, inter-area conflict was reported. A property owners group in Altadena complained to the County Board of Supervisors about what the *Times* called “gas and fumes attacks.” [July 20, 1944] The complaints led to the County district attorney holding a meeting with the Altadena group and other officials and promising to sue unnamed polluters. A County health official who attended the meeting, however, noted that participants were filling the room with noxious cigarette smoke that was worse than whatever was outside. Since cigarette smoking was far more prevalent than it is today, the implication was that the complaints about the outside air were exaggerated.

In any case, it was not clear who would be sued, although garbage dumps that burned refuse were mentioned. [August 31, 1944] It might be noted that at the time, it was common for both garbage dumps *and local homeowners* to burn their refuse in incinerators. The County Board of Supervisors directed the district attorney to sue producers “permitting obnoxious smoke and gaseous fumes to escape from smokestacks.” It was unclear, however, whether the County had any authority other than in unincorporated areas that were not part of some municipality.

An outside expert complained that the County Health Officer, H.O. Swartout, was not qualified to deal with the smog issue. The expert stated that Swartout was neglecting the role of gasoline-powered automobiles and argued that there should be mandated installation of smoke-abating devices on polluting industries. Swartout denied that he had neglected automobiles but he attributed whatever problems they were causing to low-quality wartime fuel. [September 15, 1944] When the War ended, the fuel problem would presumably vanish.

Meanwhile, within its boundaries, LA City singled out some local firms for suit. [September 13, 1944] But at the same time, Mayor Bowron told radio listeners that the City “can never go back to the old days where the air was clean and pure and sweet and scented with orange blossoms.” Nonetheless, a new city ordinance “with teeth” was needed to deal with polluters. Later, he and other city officials went for an airplane tour and it was noted that the plane had to climb to 4,500 feet to go above the “haze.” [October 12, 1944]

It appears that by the late summer and fall of 1944, the smog debate was fully engaged. The *Times* began to use the word “smog” (along with “fumes” and “smoke”) and fretted that LA was becoming “a second Pittsburgh.” (Pittsburgh, then a steelmaking center, was noted for its bad air.) [September 18, 1944] There were calls for a city “smoke czar” to be appointed. [September 22, 1944] Similarly, the County also proposed a czar (for unincorporated areas). Experts reported. Action plans were prepared. But there were more and more reports of smog attacks. Meanwhile, the Altadena group continued to agitate and rail against inadequate measures: “Cannot the Board of Supervisors realize that this menacing air pollution is with us now for two years and immediate action for relief is being demanded by a large number of taxpayers and voters?” [October 6, 1944]

The *Times* began looking for success stories from other cities that had reduced smog and it found St. Louis. There, the *Times* reported, the problem was found to be due to coal burned for home heat, railway locomotives, and industrial purposes. Coal burning was not a big issue in Los Angeles, but perhaps LA could use the St. Louis method of researching the problem and then reducing the source through a combination of pressure on polluters and regulation. [September 25, 1944] Just as St. Louis had controlled use of its coal, LA would need to control its fuels. [October 19, 1944] The *Times* quoted a chemist who asserted that “there is no fume in an industrial plant that is not controllable.” [November 28, 1944] The implication was clear; what could be done inside could be done outside.

This approach, regulatory mandates, it might be noted, was not in accord with the position at that time of the Los Angeles Chamber of Commerce which called instead for “voluntary” efforts. [October 24, 1944] The Chamber pointed to the success of Firestone Tire in South Gate which had voluntarily installed control devices after complaints about emissions had been received. [November 4, 1944] However, the City and County persisted in trying to come up with new laws. But both jurisdictions ran into problems of conflicts with state laws which regulated such activities as agricultural burning and burning for forest fire control. A federal study of the “almost unbearable” smog situation was urged by state officials noting that the multitude of jurisdictions in the LA area made a local study difficult. [November 21, 1944]

The County set up a Smoke and Fumes Commission to draft an ordinance. But there was bickering within the Commission and an unsuccessful attempt to oust its chairman. [January 24, 1945] The Board of Supervisors settled the discord by disbanding the Commission entirely. [January 25, 1945] But the basic issue was unresolved. As 1945 wore on, there continued to be calls for new ordinances at the County and City levels. A partial eclipse of the Sun, the *Times*

noted, could not be seen except from the peak of Mt. Wilson, due to smog. [July 10, 1945] It wasn't just eclipses that couldn't be seen; the *Times* regularly ran photos of smoggy conditions along with its smog-related articles.¹⁰ And there continued to be *ad hoc* suggestions. Caltech should do a study. [July 20, 1945] Perhaps cities should burn their rubbish in places where it wouldn't cause so much pollution. [August 17, 1945]

The Immediate Postwar Situation

Once the War was over, the *Times* began to show impatience. It derided many of the suggestions that were being made for clearing the air (such as not beating rugs) as silly. It noted that after the big fuss over the rubber plant, when the plant's emissions were finally controlled, the smog situation remained as bad as it was. "Maybe we can't cure it at all," opined the *Times*, but we can make a better try than this." [September 13, 1945]

One thing the *Times* did do was designate a reporter, Ed Ainsworth, to focus on the smog issue. Ainsworth wrote a combination of humorous and standard news pieces dealing with the smog problem on a regular basis. And the County, after a year of effort, finally passed an anti-smog ordinance – but just for the unincorporated areas where it had clear jurisdiction. [September 19, 1945]

The inadequacy of local ordinances for a problem that crossed city lines remained. Local city officials from various jurisdictions met and vented their frustrations. [September 20, 1945] The idea of a definitive study took hold although the *Times* complained that the City had "passed the buck to Caltech" and declared that at the current pace of action "we will have smog until doomsday." [September 28, 1945]

Nonetheless, an idea began to form – apparently as an outgrowth of a conference of local officials in Pasadena. There should be a regional "smoke control district" created. Otherwise, smog would harm postwar tourism in LA. [October 10, 1945] Local cities began to push for the County Board of Supervisors and the LA City Council to give support to establishing a regional smog authority. [November 21, 1945] The *Times* ran a story of a residents' protest at a smoky garbage dump. Even though the County had jurisdiction in that case, apparently different County agencies couldn't agree which one was responsible for dealing with the dump. [January 26, 1946] It appeared that some new regulatory entity was needed, as the local cities had been arguing, to deal with the smog problem.

But like everything else when it came to smog, progress was slow. In May 1946, the *Times* noted that some local cities were agitating for a regional authority, but this time the newspaper endorsed the idea. Smog couldn't be controlled by any one jurisdiction. The same rules had to

¹⁰Although the Los Angeles Public Library has an online collection of photos from the *LA Times*, most of the smog photos are not included and may not exist except as poor reproductions on microfilm and digitized versions of the microfilm.

apply everywhere. [May 19, 1946] With that realization and endorsement, a campaign had begun.

The Initial Campaign

In July 1946, the County provided small sums to USC and UCLA to study the smog problem. [July 15, 1946] The *Times*, however, in an editorial “explained” the cause of smog in terms of the traditional (at that time) view that it was basically smoke mixed with fog that resulted when certain wind conditions produced the combination. Various cities and the County should coordinate their anti-smog efforts but if that didn’t work, the matter might be taken to the state legislature. The legislature, if necessary, could compel cooperation from recalcitrant jurisdictions. [July 20, 1946]

With hindsight, this editorial can be seen as laying the framework for what would become the *Times*’ campaign to leverage the legislature on behalf of local smog control. A small subsequent item in the *Times* reported that only four of the (then) 45 cities within the County had signed cooperative air pollution agreements with the County. [August 8, 1946] So the idea that inter-jurisdiction cooperation could solve the problem, absent compulsion from some higher authority, seemed farfetched.

Meanwhile, there continued to be regular reports of smog problems, articles about burning dumps, letters to the editor decrying the smog situation, and photos showing officials using special equipment to sample the air and illustrating smog-caused low visibility. One photo and related article showed the LA County District Attorney staring into the smog. The District Attorney declared that “during the war, factory owners hid behind war production efforts as a screen for their failure to do something about Los Angeles’ atmospheric mess.” [September 24, 1946]

Sadly, the *Times* noted in a subsequent editorial, the District Attorney had jurisdiction mainly in unincorporated areas and had only limited legal remedies elsewhere in the County. [September 26, 1946] According to the editorial, LA needed to adopt the aggressive approach of St. Louis where “aid of civic organizations was enlisted, engineers were hired to establish the cause of the evil, and the smog soon vanished.” But in contrast, as the *Times* continued to report regularly, in LA there was inter-city finger pointing and ongoing smog.¹¹

Long articles by reporter Ainsworth appeared documenting “much talk, but fumes continue” and “county-wide co-operation lacking.” [October 13 and 14, 1946] Profiles of litigation efforts

¹¹The *Times* singled out “the heavily industrialized areas of Vernon, South Gate, Torrance, El Segundo, and adjacent factory communities” which seemed to be beyond the reach of LA County efforts to control air pollution. [September 26, 1946] Vernon up to the present has had a reputation as an out-of-control and corrupt artificial “city” with only a few city employees and their families as residents. TV viewers of the HBO series “*True Detective*” will recognize the fictional city of “Vinci” in that program’s 2015 season as an unsubtle stand-in for Vernon. An attempt in the state legislature to disincorporate Vernon in 2011 after a scandal there was ultimately defeated.

to deal with smog were provided. But LA smog seemed to be mysteriously different from smog in other cities, notably because it contained a mystery component that caused eye burning; no one knew what it was or why it occurred. Readers were invited to write or phone the *Times* with tips on sources of smoky emissions. [October 15, 1946] Ainsworth accompanied County smog inspectors on their searches for smog villains. [October 17, 1946] In dramatic language, he described “every street (as) a poison tunnel.” [October 18, 1946] Ainsworth profiled the diligence of the LA City official in charge of the smog issue who “is staying on the job past his retirement age” because he wanted to restore the air to what it was when he was a boy. [October 19, 1946]

In his stories, Ainsworth listed the known causes of smog (industrial smoke, oil refineries, burning dumps, etc.) but automobiles were not included at the outset. [October 20, 1946] As noted earlier, although autos were sometimes suspected of playing some role, they didn’t emit the kind of black smoke that could be spotted coming from a smokestack. *Times* readers did send in the reports of specific polluters as the newspaper had requested. “Smog Complaints Pour in for Official Investigation,” headlined one Ainsworth piece. [October 21, 1946] But who would report that he or she saw anything as ordinary as a car going by emitting normal exhaust? So it’s not surprising that the ongoing Ainsworth stories initially omitted that source except for “old smoky cars.” [November 5, 1946] But he did report on some interesting findings about gases found in the downtown Second Street automobile tunnel and that there was some indication that perhaps those gases, combined with sunlight, might be a cause of smog. [November 7, 1946]

Still, Ainsworth mainly concluded that what was needed was creation of a unified “smog abatement district” in the County. [October 25, 1946] This idea unnerved Mayor Bowron who feared that an autonomous district would preclude municipal control. [November 8, 1946] But Ainsworth reported that there would be a move in the state legislature to enable creation of such a district. [November 20, 1946] In the interim, Ainsworth reported on residents demanding that dumps be closed. [November 2, 1946] He pointed out that the synthetic rubber plant on which blame had been heaped during the War had been cleaned up; if that plant could be fixed, he reasoned, so could the other smog sources. [November 4, 1946]

Ainsworth reported that the LA Chamber of Commerce preferred to rely on voluntary cooperation of industry. But, he also noted that in St. Louis – the success story – cooperation didn’t work; a regulatory framework that “clamped down” on polluters turned out to be needed there. [November 5, 1946] Indeed, Ainsworth reported that folks in St. Louis were snickering that they had cleaned up their air while Los Angeles had become “smog town.” [November 8, 1946]

In one report, Ainsworth told of the appointment in St. Louis of a fellow named Raymond Tucker as a kind of smog czar who then implemented the cleanup of the air in that city. Tucker was an engineer and an academic who was now back teaching at Washington University in St. Louis. [November 9, 1946] That article introduced Tucker to *Times* readers and laid the ground

for his importation by the *Times* to LA. A few weeks later, Ainsworth reported that “the *Times*, at its own expense, will bring to Los Angeles... one of the leading smoke-and-fumes experts of the United States for a detailed survey of the smog situation...” The expert was none other than Raymond Tucker. [December 1, 1946]

Los Angeles could now breathlessly (literally) await the arrival of the *Times*’ expert. While LA waited, Ainsworth announced, there would be more smog articles which would be “climaxed” by a special report in the *Times*. That report, in turn, would be a “prelude” to a survey of LA’s problem to be conducted by Tucker. [December 4, 1946] The paper reported that it was being “lauded” for bringing Tucker and that praise was being received from officials for its “public-spirited step.” [December 3, 1946]

Of course, the prospective arrival of Tucker did not cause local smog to abate. The *Times* ran a story of foreign war heroes whose plane had trouble landing in LA due to smog-impaired visibility. [December 5, 1946] Ainsworth continued to write about smoky oil refineries and diesel trucks. [December 5 and 6, 1946] But there were periodic reminders of Tucker’s impending study while the *Times* posed a question to its readers: “Either we can take the menace seriously, and fight it seriously, or we can sit and weep in the gloom. Which shall it be?” [December 8, 1946] And, to leave no doubt as to the proper answer, the paper announced the next day that Tucker had arrived! A photo showed him standing atop the Federal Building and looking at the surrounding haze. [December 9, 1946]

Waiting for the Report

With Tucker’s arrival on the scene, the *Times* continued its campaign. Officials were quoted as endorsing the need to clean up the air; Tucker was shown being briefed by local officials and looking at a steam locomotive in a rail yard. Ainsworth and Tucker appeared together on a local radio program. [December 10, 1946] The *Times* soon reported that the LA Chamber of Commerce had joined its fight against smog. [December 13, 1946] It appears, however, that the LA Chamber, while naturally against smog, had not yet actually endorsed the direction the *Times* was going, i.e., a system of mandatory controls administered county-wide.

The *Times* announced it was forming a “citizens’ committee” to assist Tucker in preparing his report. [December 15, 1946] Tucker’s progress in traveling around the area to look at possible smog emitters was regularly reported. Civic leaders held a meeting with Tucker in the exclusive California Club “to map smog war plans.” [December 18, 1946] A chair of the citizens’ committee – now dubbed the “Times Smog Advisory Committee” – was selected at a luncheon hosted by publisher Norman Chandler. The committee was composed mainly of businessmen plus two women – one described as a prominent clubwoman and the other as a South Pasadena civic leader. Also included was the past president of Caltech and the mayor of Glendale.

The chairman of the new committee was William Jeffers, a retired president of the Union Pacific Railroad. Tucker reported to the group on his success in St. Louis and stressed that enforcement must be “continuing and relentless” if progress was to be made. [December 20, 1946] He soon returned by train to St. Louis to put together his report. But now the *Times* had Jeffers as its anti-smog personality. Tucker had been the respected expert; Jeffers would be the salesman. The *Times* praised itself for its careful and prudent campaign and its choice of expert Tucker. It had avoided “yellow journalism” in its approach, the *Times* noted in an editorial by not singling out villains. Nonetheless, smog control, the *Times* said, would require legislation to identify and control the villains once the Tucker report was in. [December 24, 1946]

Jeffers was a glad-handing individual whose task would be to enlist the local elite in support of the legislation sought by the *Times*. The legislation would create a county-wide smog control district. What remained to be found was a legislator to introduce the bill. The *Times* found its candidate in Republican Assemblyman Albert I. Stewart of Pasadena – a former mayor of that city - who thereafter received positive publicity in the newspaper for his anti-smog activity.¹² [January 29, 1947] The battle would be tough and not for the “faint of heart,” according to the *Times*, but “the weapons for the battle have been forged.” [January 30, 1947] It was arranged that the bill – formally known as the Air Pollution Control Act – would receive eye-catching numerical label “Assembly Bill No. 1.” [January 9, 1947]

Meanwhile, as a prelude to the legislative battle, the *Times* continued gathering support and publicizing its successes in doing so. The LA County Medical Association was persuaded to join the fight. [January 5, 1947] Human interest stories were published; one such story involved parents who took their infant up in an airplane to avoid having to breathe the smog down below. [January 5, 1947] Smoggy photos continued to appear. The southern California branch of the state Chamber of Commerce was enlisted to support the needed legislation. [January 8, 1947] LA school children would be recruited to teach their parents the proper way to utilize backyard incinerators. [January 14, 1947] The *Times* also indicated that perhaps there shouldn’t even be burning of trash in public dumps; maybe rubbish should be buried rather than burned. [January 15, 1947]

As the date for Tucker’s smog study approached, the *Times* indicated in advance that the study’s text would soon appear in its pages. The Tucker report then appeared in the January 19, 1947 edition on page 1. Tucker’s report blamed the usual suspects: smoky emissions from dumps and industry. While automobiles might contribute to smog, Tucker cautioned against putting too much of the blame on cars. But burning in dumps should be halted.

The Tucker report endorsed the idea of a unified smog control authority for the county. Jeffers’ committee – now sometimes dubbed the *Citizens’* Smog Committee and sometimes the *Times*

¹²Local Democrats in Pasadena a few weeks earlier “at a mass meeting” had condemned Stewart for having “utterly failed to recognize (the smog) menace.” Letter sent to Governor Earl Warren dated October 17, 1946. Earl Warren Papers in California State Archives, Administrative Files F3640:3240.

Smog Advisory Committee – immediately met to plan for implementation of the report’s recommendations. [January 20, 1947] The committee, the *Times* reported, “plunged with characteristic Jeffers vigor into the fight to whip smoke and fumes in Los Angeles.” [January 24, 1947]

Commendations to the *Times* for sponsoring the report by the county Board of Supervisors and the LA City Council were noted by Ainsworth. [January 21, 1947] Local industries pledged to reduce emissions. Smoky diesel trucks were ticketed. But, the *Times* editorialized, “neither the (Tucker) report nor the committee’s work can mean anything without the genuine and continuing support of the residents of metropolitan Los Angeles.” [January 26, 1947] In pursuit of that support, Ainsworth was sent out to talk to local civic groups. [January 28, 1947]

The Campaign Escalates

By early February 1947, Jeffers’ committee had recruited legal talent to aid Assemblyman Stewart in refining his bill. [February 2 and 5, 1947] Meanwhile, comedian Groucho Marx penned a humorous letter to the *Times* noting that although the Tucker reported recommended halting backyard trash burning by homeowners, local garbage collectors refused to take away his paper trash. [February 3, 1947] What was a homeowner to do?

More seriously, the *Times* reported that smog was likely to increase the incidence of childhood rheumatic fever. [February 6 and 9, 1947] In response, a “militant group of mothers” demanded the closure of various dumps. [February 13, 1947] The County Board of Supervisors appropriated funds for a new incinerator to replace the dumps, but, the *Times* reported, they were faced with public demands that rubbish be buried instead. [February 18, 1947] Generally, dumps remained ongoing culprits in the pages of the *Times* throughout the legislative campaign. Photographs of dump smoke and headlines about dumps being shut down or cited were regular features.

The committee formed by the LA County Medical Association warned that smog was aggravating respiratory diseases in general. [February 8, 1947] Jeffers met with a group of engineers and enlisted their support. He warned that if the Stewart bill wasn’t passed, there would be a popular revolt and that in such cases, “the people always go too far.” [February 13, 1947] A few days later, as if to confirm the Jeffers prediction, the County Board of Supervisors found itself heckled “amid shouting disorder” by angry citizens. [February 19, 1947] Throughout this period, Jeffers spoke to local groups – Masonic lodges, Kiwanis Clubs, etc. – arguing that industries which currently discharged waste into the air could profitably recycle wasted materials instead.¹³ [March 12, 1947]

¹³The Altadena Lions Club sent a petition to Governor Earl Warren dated March 7, 1947 asking him to “take all necessary action to abate and control the matter of Smog at the earliest possible date.” Earl Warren Papers, California State Archives, Legislative Files, F3640:8818. Whether this petition resulted from a Jeffers presentation is unknown. A petition was also sent by the South Bay Garden Club dated April 28, 1947.

Some of the *LA Times*' articles looked at efforts in other cities to clean up smog. The *Times* noted, however, that in industrial eastern cities such as Pittsburgh smog was associated with coal burning and related soot. But there was something different about LA's smog: "the mysterious substance that causes eye-smarting." [March 2, 1947] Although the mystery had not been solved, the *Times* reported on positive developments in industries thought to be contributors to LA's unique problem. Railroads were complimented for converting to diesel locomotives instead of steam engines. (Note that Jeffers was an ex-railroad executive and still a member of Union Pacific Railway board.) [March 3, 1947] A local transit operator received favorable publicity for a plan to install electric trolley buses ("trackless trolleys" with no emissions using overhead wires) on one line. [February 20, 1947]

Still, there was a problem with LA's Mayor Fletcher Bowron. Bowron would complain about smog from other jurisdictions wafting into his city. But he initially appeared to be opposed to the Stewart bill since it would impose a county-wide control district that would presumably override LA City programs. [February 27, 1947] Bowron qualified his opposition, however, indicating that what he wanted was a mix of city and county representation on the board that would run the proposed smog district. [February 28, 1947] However, the bill being pushed by Jeffers put control only in the hands of the County Board of Supervisors.

In any case, there was other opposition. The *Times* reported that an anonymous group had "deluged" members of the legislature with unsigned letters opposing the bill on the grounds that innocent citizens would be arrested for backyard barbecuing. [March 7, 1947] However, the negative letters had to compete with poetry in the *Times*: [excerpt – March 15, 1947]

*...Joys of California sun
They have stolen one by one.
Incomplete the Decalogue;
Nothing in it speaks of smog...*

Eventually, the *Times*' campaign led Mayor Bowron to pledge support for whatever bill finally emerged from the legislature. The newspaper celebrated the mayor's conversion as one of being in the "spirit of unity." [March 19, 1947]

Working on the Legislature

By April 1947, the campaign for Assembly Bill No. 1 was fully engaged. Various amendments were added. But the key features of the bill were that 1) any county in California could establish a smog control district administered by its Board of Supervisors, 2) the district would be administered by a smog czar who would be outside existing county agencies, and 3) the district would measure smoke density and enforce standards of emission. [April 3, 1947] The full bill was published word-for-word in the *Times* on April 16. And in case readers had somehow

missed that edition, they could get a free copy mailed to them – along with a copy of the Tucker report – by request to the *Times*. [April 27 and May 4, 1947]

The *Times*, as legislative amendments were being added, kept pushing groups that were opposed, or hadn't endorsed the bill, to become supporters. Eventually, the LA Chamber of Commerce – which initially seemed reluctant to support more than voluntary controls and had set up its own smog panel of experts – agreed to support the bill.¹⁴ [April 6 and 25, 1947] With the LA Chamber in support, the state Chamber followed. [April 28, 1947] In addition, the LA City Council eventually unanimously followed the lead of the mayor and endorsed the bill. [April 30, 1947] Of course, Tucker, back in St. Louis, added his personal endorsement of the bill. [April 9, 1947]

Jeffers continued to hold up the specter of a populist revolt if the legislation wasn't enacted. With that warning and with all of that support that had been garnered, the Assembly Committee on Public Health voted 6-to-2 (with one abstention) to send the bill with a favorable recommendation to the full Assembly.¹⁵ [April 30, 1947] The *Times* praised “the splendid work” done by Assemblyman Stewart and the Assembly Committee chair Ernest Debs. [May 4, 1947] (Debs would later become a member of the LA County Board of Supervisors which would run the smog control district.)

Given the Assembly Committee's endorsement, the full Assembly approved the bill with a 73-to-1 vote. At least one of the legislators who had voted against the bill in committee – an assemblyman from Pomona – reversed his opposition after coming under pressure from his home district. [May 5 and 8, 1947] The *Times* declared that “the Assembly vote points to an era of clearer air for Los Angeles County.” [May 8, 1947] But, of course, to become law, the bill would need a positive vote in the state senate. Aiding that effort was a new endorsement by the head of the California Fruit Exchange. [May 15, 1947] In that era, long before the Supreme Court's one-man/one-vote decision, the legislature was heavily tilted towards low-population rural agricultural districts. So farm interest support was important.

LA County Counsel Harold Kennedy – who had been instrumental in drafting the bill – visited Sacramento to push for Senate support. [May 16, 1947] Meanwhile, Ainsworth reported in the *Times* that special interests in oil and lumber were opposing the bill and supporting amendments that would weaken the bill. [May 17, 1947] As the *Times* put it, “selfish interests” were trying to impose “stifling amendments.” [May 18, 1947]

Ainsworth further reported that Jeffers was urging members of the public to get in touch with their senators and urge passage of the Assembly's bill without “crippling amendments.” [May 18, 1947] Apparently, the campaign was effective because the oil and lumber industries soon agreed to end their opposition. [May 20, 1947] The *Times* then praised the oil companies for

¹⁴As noted earlier, the *Times* had declared that the LA Chamber had joined its fight before it really had.

¹⁵There were apparently initially three negative votes but one assemblyman reversed his opposition saying he hadn't fully understood the bill. [May 5, 1947]

dropping opposition and for their voluntary pollution controls. [May 21, 1947] By the end of May, the Senate Committee on Public Health had passed the bill unanimously. [May 28, 1947] The full Senate then passed the bill in early June, 29-to-0. [June 2, 1947]

There was no real doubt that Governor Earl Warren would sign the bill (and he did on June 10). That signature started a 90-day clock before the law would take effect. Warren's office issued only a cursory announcement:

*Governor Warren has signed A.B. 1... A.B. 1, by Stewart and others is Los Angeles County's smog control bill authorizing the establishment of air pollution districts. It was passed unanimously in both houses.*¹⁶

But despite the lack of fanfare at the governor's office, the *Times* celebrated its "full-fledged campaign of facts and education" and suggested that Tucker would make a fine first smog czar for LA. [June 4, 1947] Ainsworth picked up the theme of Tucker to head the new agency, saying that "many persons" were suggesting his name. [June 8, 1947] But other names were added to the list of possible candidates and Tucker stayed in St. Louis.

When the new district started operations in October 1947, Louis McCabe became head of the agency. Oddly, his background was in coal which was not a major fuel in Los Angeles. Unlike Tucker, McCabe was not a big name in the LA area. Ainsworth misspelled his name as "Luis" when he announced his arrival in LA to take the job. [September 24, 1947]

Although the campaign for legislation was over, Ainsworth and the *Times* continued to feature smog stories. Generally, the stories described particular polluters and/or technical steps that had been taken to abate emission. McCabe's early days on the job were described as he toured the area and visited pollution sources. After the new agency formally began operations, the *Times* editorialized that McCabe "must be given a free hand, and then be strictly accountable for results after a reasonable time. The smog must go. And now is the time for the real offensive." [October 15, 1947] But smog did not go away and McCabe eventually resigned after a beleaguered couple of years, sometimes charged with doing too much and sometimes too little. The criticisms of the district continued after his departure.¹⁷

Aftermath

With the benefit of hindsight, we know that the passage of the Air Pollution Control Act, Assembly Bill No. 1, was not the end of smog in the Los Angeles area. To paraphrase Winston Churchill, the new law was not the beginning of the end, but it *was* the end of the beginning. Southern California remained afflicted with severe smog long after 1947. Nonetheless, smog –

¹⁶Earl Warren papers, California State Archives. Press Release, Bills Signed, June 10, 1947. F3640:1946. (press release files)

¹⁷James E. Krier and Edmund Ursin, *Pollution and Policy: A Case Essay on California and Federal Experience with Motor Vehicle Air Pollution, 1940-1975* (Los Angeles: University of California Press, 1977), pp. 66-72.

once seen in Sacramento as a local issue for the LA area – became something that governors could not ignore.¹⁸ The LA area was just too large and the smog protesters became too vocal for there to be political neglect.

Over time – and with resistance from such interest groups as automobile manufacturers – the chemical reactions in the atmosphere that produced smog became understood. A Caltech scientist – Arie Haagen-Smit – in 1953 figured out the process by which photochemical smog formed out of a combination of nitrogen oxides and hydrocarbons and ultraviolet radiation. There was no doubt that cars were a major cause of smog. Public agitation and pressure grew and eventually controls on exhaust pipe emissions were required starting in 1961.

Haagen-Smit became the first chair of the statewide California Air Resources Board in 1968, appointed by then-Governor Ronald Reagan. Regulations generally became more extensive on other sources of emissions and more controls were added to automobile exhaust emissions. The multi-county South Coast Air Quality Management District for the southern California area was formed in 1976 out of the county boards that had been authorized by the 1947 law. Air quality gradually improved despite increasing population in southern California, but it took decades for true progress to be felt.¹⁹

The *Times* may have hoped for a Pulitzer Prize for its anti-smog work and for Ainsworth's reporting. But, if so, it didn't happen. Nonetheless, the newspaper continued to emphasize the smog issue long after 1947. But it seemed reluctant thereafter to point to its own role in passage of Assembly Bill No. 1. Perhaps there was a sense that progress on improving air quality in LA was not coming along as fast as had been hoped. Ainsworth died at age 66 in 1968 when smog was still a major problem in LA. A brief mention of his work on smog was included in his *Times* obituary which mainly focused on other aspects of his career. [June 17, 1968]

Raymond Tucker, the smog expert, became mayor of St. Louis. He died in 1970. The *Times'* obituary noted his work on cleaning up smog in St. Louis and added a sentence on his role in the newspaper's anti-smog campaign for LA. [November 25, 1970] Jeffers died in 1953. References to his death in the *Times* focused on other (non-smog) aspects of his career. [March 11, 1953] All of these names, and even the *Times'* anti-smog campaign activities in the 1940s, have largely been forgotten. But now you, dear reader, know about them.

So is the lesson of the *Times'* campaign that violation of what are now considered the standards of good journalism is what is needed to make progress on issues of the day? The *Times*, as we have documented, made little or no distinction between its editorial position and its reporting in pushing forward the first major California legislative attempt to deal with the smog that was

¹⁸ Lieutenant Governor Goodwin "Goody" Knight, Earl Warren's successor when Warren went to the U.S. Supreme Court in 1953, found that LA smog was an issue he would have to confront as the 1954 gubernatorial election approached. See the interview with Malcolm H. Merrill in "Earl Warren and the Department of Public Health," http://digitalassets.lib.berkeley.edu/roho/ucb/text/ew_pub_health.pdf.

¹⁹ A summary of developments in the history of smog control from the California Air Resources Board can be found at <http://www.arb.ca.gov/html/brochure/history.htm>.

plaguing Los Angeles. Maybe the lesson is simply that good results can sometimes emerge from surprising sources. Perhaps we also learn that progress on dealing with big challenges can be disappointingly slow.

CHAPTER 2

Evaluating Shared Lane Markings for the City of Santa Monica: *The Efficacy of Colored “Super Sharrows”*

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In recent years the shared lane marking, otherwise colloquially known as “sharrows,” has become a popular tool in cities that seek to promote safer and increased bicycling on their roadways. The sharrow is a white logo on street pavements whose fundamental purpose is to indicate to motorists and bicyclists that the road is to be shared. Though they do not carry legal weight in and of themselves—bicyclists are legally allowed to take control of any given road or lane with or without the presence of sharrows in California—their presence serves to provide awareness to motorists of the potential presence of cyclists. They also show cyclists proper positioning on the road given the absence of a segregated bicycle lane. Previous studies have shown that these markings provide positive outcomes in terms of behavior between motorists and bicyclists and proper positioning of bicyclists on roads where they are installed.

The purpose of this chapter is to demonstrate how effective traditional white sharrows and colored “super sharrow” markings—traditional white sharrow markings that are embedded in colored lanes—are at increasing bicycle ridership and rider safety, and which types of roads in Santa Monica, CA are most suitable for each of them. The data from our completed study show that sharrows do lead to bicyclists riding closer to the center of the lane, thus moving them out of the dangerous door zone, the area where bicyclists may collide with the opened door of a parked motor vehicle, as well as safer interactions with motorists. The data also indicate that both white and colored super sharrows increase ridership, with the colored super sharrow having a greater effect.

The effectiveness of sharrow lanes does depend on the type of street on which they are installed. Sharrows are much less effective on streets where traffic tends to move quickly, and should only be installed where the speed limit is less than 35 M.P.H. Colored super sharrows cost considerably more than traditional white sharrows and thus are best suited for streets with high levels of traffic where their benefit will be most pronounced. On streets with central turning lanes, motorists have the option to pass bicyclists using the turning lane, which leads to in general safer interactions between bicyclists and motor vehicles, and these roads are especially suited for colored super sharrows. Implementation should be accompanied by public

education campaigns to educate the general public on the meaning of these bicycle facilities. Finally, because Santa Monica already has segregated green bicycle lanes on some streets, colored super sharrows should either be installed in a different color, or should have a distinctive pattern to distinguish them from bicycle lanes.

Policy questions and the policy problem

Transportation agencies all throughout the United States have experimented with a variety of bicycle infrastructures and facilities to provide a safer riding and driving environment for bicyclists and motorists. The goal is to mitigate motor vehicle congestion and air/noise pollution in densely populated locales, and to incentivize this form of transportation given the health benefits it has shown to confer upon individuals. In recent years, the City of Santa Monica has sought various ways in which to increase bicycling on its streets.

One of the stated goals of the Santa Monica Bike Action Plan, for instance, is to get people in the city to make up to 35% of their trips via bicycles by 2030.¹ We attempt to determine: 1) whether or not colored “super sharrows” markings (a variant of the traditional white sharrows marking) are conducive to bicyclist safety; 2) whether or not colored super sharrows markings can increase bicycle ridership on roads where they are installed; 3) what types of roads (in terms of number of lanes, speed limit, typical level of congestion, zoning area, etc.) will receive the greatest benefit from colored super sharrows lanes in Santa Monica; and 4) the costs and benefits related to the installation of these sharrows in the client city.

Sharrows are markings on street pavements whose fundamental purpose is to indicate to motorists and bicyclists that the road is to be shared between them. Though they do not carry legal weight in and of themselves—bicyclists are legally allowed to take control of any given road or lane with or without the presence of sharrows²—they provide awareness to motorists

1. *Santa Monica Bike Action Plan*, Report, November 2011, <http://www.smgov.net/uploadedFiles/Departments/PCD/Plans/Bike-Action-Plan/Bicycle-Action-Plan.pdf>.

of the potential presence of bicyclists and thus also aim to reduce aggressive behavior by drivers toward bicyclists. For bicyclists, they show proper positioning on the road, encourage them to ride off the sidewalk, away from the edges of the road, and on the correct side of the road. Given the location of where they are marked on the pavement—outside and away from the reach of an opened door of a parked motor vehicle—they prompt bicyclists to ride closer to the center of the lane and thus prevent “dooring” accidents, which are collisions between opened motor vehicle doors and bicyclists.

Though their design can vary in shape and size from place to place, the sharrows present throughout greater Los Angeles contain the silhouette of a bicycle with two inverted “V” shaped symbols, or chevron markings, above it. Along with such markings, cities like San Francisco, CA and Long Beach, CA have recently experimented with colored super sharrows. Such sharrows are like the traditional sharrow marking but are embedded in green lanes with a width of about 5 or 6 feet.³

Separate bicycle lanes are ideal for bicyclists' safety, as the lanes are segregated from motor vehicles and pedestrians. They are also ideal from the viewpoint of motorists, since drivers do not have to contend with bicyclists on the road. However, it is not possible to install bicycle lanes on many streets.

According to California guidelines, the minimum width of a bicycle lane is 5 feet if street parking is permitted.⁴ Many streets are too narrow for a bicycle lane of this width to be installed unless the lane reserved for parked motor vehicles is converted into a bicycle lane, which is often politically infeasible. Business owners want customers to be able to park in front of their stores, and drivers do not want to give up available parking spaces in a city in which it can often

2. California Vehicle Code (CVC) 21200 explicitly states that bicyclists have all the rights and responsibilities of drivers of motor vehicles. CVC 21202 states that bicycles that are travelling slower than the normal speed of traffic must ride as close to the right side of the road as practicable except: when passing, preparing for a left turn, to avoid hazards and dangerous conditions, or if the lane is too narrow.

3. See the Appendix for renderings and actual depictions of both types of sharrow markings.

4. *Complete Streets Manual: Chapter Nine of the City of Los Angeles Mobility Plan*, Report no. 14-XXXX-XX. 2014, accessed March 10, 2015, 7-19, <http://planning.lacity.org/Cwd/GnlPln/MobiltyElement/Text/CompStManual.pdf>.

already be difficult to park. As such, elected representatives have historically shied away from promoting them. Therefore, the option of installing sharrows is a political and policy compromise between having bicycle lanes and no bicycle facilities at all.

Our evidence shows that: 1) there are decreased unsafe interactions between motorists and bicyclists in the presence of sharrows; 2) bicyclists improve their positioning on roads where sharrows are marked; and 3) both colored super sharrows and traditional sharrows increase bicycle traffic, while the former has a greater impact to this end.

Overview of our methodology

Our study attempts to estimate the benefits of colored super sharrow markings on two bicycle-related metrics:

➤ Ridership

- We examined bicycle count data from 2nd Street in Long Beach, CA before and after the green super sharrow marking was installed there. While the study showed an increase in bicycle ridership, we cannot say with certainty what percentage of this increase can be attributed to the installation of this type of sharrow.
- We conducted a traffic count at two intersections with similar streets to measure the difference in bicycle and motor vehicle traffic between the intersecting streets. If it is found that motor vehicle traffic is similar on both streets, then we can infer that the difference in bicycle traffic is associated with the bicycle facility, or sharrow marking.

➤ Safety

- We looked at data on the number of traffic accidents involving bicycles in Long Beach, CA before and after the installation of the super sharrow lane there, taking into consideration the increase in bicycle traffic after the sharrow lane was installed.
- Since bicyclists' positioning on the road is a major factor affecting motorists' behavior toward them, and bicyclists riding in the door zone is a direct cause of dooring accidents, we attempted to study the factors affecting where bicyclists position themselves relative to the center of the lane.
 - We first conducted surveys to gauge the general public's perception on where bicyclists should position themselves on the road.

- We then observed where bicyclists position themselves relative to the center of the lane on streets with and without sharrow markings.
- Because there is only one street segment with the green super sharrow marking in greater Los Angeles, we also studied the effects of traditional white sharrow markings in comparison to streets with no markings at all.

Ridership

Between 2010 and 2011, the Los Angeles Department of Transportation (LADOT) undertook a shared lane marking study which entailed the installation and testing of the traditional white sharrow marking on various streets in the Los Angeles area. The goal of the LADOT was to determine before and after motorist and bicyclist interactions on the chosen streets. The “before” phase entailed no sharrows present on the streets while the “after” included the presence of white sharrows.

Results of the LADOT study indicate statistically significant changes between the “before” and “after” trials of the study—the average passing distance of motorists when they encountered bicyclists on streets where the sharrow logo was installed (the “after” phase of the study) increased.⁵ Despite the information gleaned from such a study, and though the observation of a certain road segment takes into consideration and controls for locational effects, there may be other factors, such as variation in time, which may cause bicycle ridership to increase. Thus, to study the effect of sharrow markings on bicycle ridership further, we observed traffic at the intersection of Ohio Avenue and Veteran Avenue in the Westwood, CA area, as well as at the intersection of Fountain Avenue and Normandie Avenue in Hollywood, CA. In both cases, the intersecting streets are two-lane streets with similar amounts of usage. Avenues Ohio and Fountain have white sharrow markings, while avenues Veteran and Normandie do not.

5. De La Vega, Jaime, *Shared Lane Marking Study: Final Report*, report, Los Angeles: Los Angeles Department of Transportation, 2011, accessed March 8, 2015, 23, https://ladotbikeblog.files.wordpress.com/2011/06/ladot_slm_final_report_062211.pdf.

Over two one-hour periods on weekday evenings we recorded the number of motor vehicles and bicycles crossing both of these intersections from either street. Ohio Avenue had 32% more motor vehicle traffic than Veteran Avenue, but 157% more bicycle traffic. Fountain Avenue had 12% more motor vehicle traffic than Normandie Avenue, but 267% more bicycle traffic.

Table 1: Chi-square test, Westwood, CA.

	Motor Vehicle traffic	Bicycle Traffic	Total
Veteran Ave.	654 (97.9%) ¹	14 (2.1%)	668 (42.5%) ²
Ohio Ave. (White Sharrow)	868 (96.0%)	36 (4.0%)	904 (57.5%)
Total	1522 (96.8%)	50 (3.2%)	1572 (100.0%)

$\chi^2 (1, N = 1572) = 4.44, p = 0.035$

1 Row percent

2 Column percent

Table 2: Chi-square test, Hollywood, CA.

	Motor Vehicle traffic	Bicycle Traffic	Total
Normandie Ave.	542 (98.9%) ¹	6 (1.1%)	548 (46.4%) ²
Fountain Ave. (White Sharrow)	610 (96.5%)	22 (3.5%)	632 (53.6%)
Total	1152 (97.6%)	28 (2.4%)	1180 (100.0%)

$\chi^2 (1, N = 1180) = 7.21, p = 0.007$

1 Row percent

2 Column percent

To test the statistical likelihood that our findings could be random, we employed a chi-square test where we 1) calculated the expected number of each traffic type on each street; 2) subtracted the expected number from the observed number for each traffic type on each street; 3) squared the difference and then divided by the expected number for each traffic type

on each street; 4) summed up the numbers across traffic types and streets; 5) calculated the probability that we could find this difference in bicycle traffic ratios if the percentage of bicycle traffic on both streets were the same. Results: $\chi^2 (1, N = 1572) = 4.44, p = 0.035$ for Veteran Avenue and Ohio Avenue, and $\chi^2 (1, N = 1180) = 7.21, p = 0.007$ for Normandie Avenue and Fountain Avenue. Based on the Chi-Square test, we were able to reject the null hypothesis that the difference in bicycles as a percentage of total traffic was random. The data and calculations are presented in Tables 1 and 2.

If we assume that the proportion of bicycle traffic to motor vehicle traffic on intersecting streets should be roughly similar, we can measure the difference between predicted bicycle traffic vs. actual bicycle traffic on the streets with sharrow markings. We can then divide this number by the number of vehicles crossing each intersection on the streets with sharrow markings to estimate the number of additional bicycles per motor vehicle. This allows us to estimate the total number of additional bicycles we would expect to see per day based on the average daily traffic of the street with sharrow markings.

This approach has several drawbacks, however. First, we assume that motor vehicle traffic on Ohio Avenue is not affected by white sharrow markings, but motor vehicle traffic likely decreases to some extent as bicycle traffic increases. Second, we assume that the ratio of motor vehicle traffic and bicycle traffic should be roughly the same between two crossing streets without white sharrow markings. While this is certainly not a precise estimation, the magnitude of difference in bicycle traffic between streets with sharrow markings and streets without indicates that we are seeing an effect even if this correlation is much lower.

Because much of the additional bicycle traffic we see on streets with sharrows likely consists of existing bicycle traffic diverted from streets without sharrows—and possibly from Veteran Avenue or Normandie Avenue directly onto Ohio Avenue or Fountain Avenue depending on the route—we have lowered our estimate of additional bicycle traffic generated by the sharrows to account for this substitution effect. We chose a high end of 60% and a low end of 40% of additional traffic being attributable to substitution. Even with this reduction, we estimate that

the sharrow marking significantly increases daily bicycle traffic. Below are our estimates of additional bicycle traffic per day and per year for high volume (12,000 average motor vehicles per day), medium volume (7,200 average motor vehicles per day), and low volume (5,000 motor vehicles per day) streets:

Table 3.

New bicycle traffic/day	High Case	Low Case
High Volume Street	159	106
Med Volume Street	95	64
Low Volume Street	66	44

Table 4.

New bicycle traffic/year	High Case	Low Case
High Volume Street	58083	38722
Med Volume Street	34850	23233
Low Volume Street	24201	16134

We find that the percentage of bicyclists riding on the sidewalk is far lower on Ohio Avenue than on Veteran Avenue. Roughly 62% of bicycles on Veteran Avenue were ridden on the sidewalk, compared to only 8.3% having been ridden on the sidewalk on Ohio Avenue.

To compare the effect of green super sharrows against white traditional sharrows, we also calculated additional bicycle traffic per motor vehicle amount by utilizing data from the before-and-after study undertaken by the City of Long Beach in 2010 one year after the installation of green super sharrows on 2nd Street. According to this study, the three-day bicycle count increased by 1,176 on 2nd Street one year after the green super sharrow was installed there. That amount averages to 392 per day. Because we did not have traffic volume data from the City of Long Beach, we tried to find a similar street elsewhere.

Among streets with traffic data made available by LADOT's "Current Count Data," the most similar one is probably Main Street in Venice, CA. The average daily traffic (ADT) there on a given Tuesday is 12,479.⁶ Since there might be differences between weekday and weekend traffic in a touristic area, we sought to adjust that number for weekends. In the same region, we have traffic volume data of Abbot Kinney Blvd. from LADOT data for both a given Tuesday and a given Saturday. The ADT for that given Tuesday is 7,790. And the ADT for that given Saturday is 7,959. Based on these data, weekends have 2.2% more traffic. Assuming Main Street, which intersects Abbot Kinney Boulevard, has a similar weekend/weekday difference in traffic, it would then have $12,479 * 1.0217 = 12,750$ of ADT on weekends.

Assuming Second Street in the Belmont Shore District area of Long Beach, CA has the same motor vehicle traffic as Main Street, additional bicycle traffic per motor vehicle comes to $392/12750 = 0.031$. If we assume that around 20% to 60% percent of the additional bicycle traffic is rerouted traffic (we have a much lower estimation for rerouted bicycle traffic than Ohio Avenue and Veteran Avenue because according to our observation, 2nd Street has a much higher share of leisure bicyclists who probably only bicycle on that street), 40% to 80% of additional bicycle traffic is newly added. Therefore, newly added bicycle traffic with green super sharrows is $0.031 * 40\% - 80\% = 0.0123$ to 0.0246 per motor vehicle.

Safety

Bicyclists' positioning: If bicyclists position themselves closer to parked motor vehicles while riding, they are more likely to be doored, or to be involved in a collision in the event a parked vehicle's door is swung open. In our study, we aimed to see whether or not the positioning of bicyclists changed given the type of bicycle facility they were riding over (i.e., traditional sharrow vs. colored super sharrow), and compared the differences, if any, across different road types.

6. "Los Angeles Department of Transportation," Current Count Data: Department of Transportation: City of Los Angeles, accessed March 13, 2015, http://ladot.lacity.org/stellent/groups/Departments/@LADOT_Contributor/documents/Contributor_Web_Content/LACITYP_023704.xls.

Interaction between motor vehicles and bicyclists: Interactions between motor vehicles and bicyclists were coded with the following five categories, where “E” is considered particularly dangerous, and “B” and “D” are considered unsafe interactions:

- A: Motor vehicle follows with distance
- B: Motor vehicle follows closely
- C: Motor vehicle passes using different lane
- D: Motor vehicle passes with distance
- E: Motor vehicle squeezes by

Bicyclist demographics: We observed and recorded the age and gender of riders to evaluate whether or not there is a difference in demographics for different road types and bicycle facilities.

General public’s perception of where bicyclists should position themselves: While surveying members of the general public, we showed them pictures of roads with traditional sharrows and green super sharrows and asked them where they think bicyclists should position themselves while riding on each type of facility. If people presume bicyclists can ride in the center of the lane, they may be more accommodating if they encounter them in that position while driving.

Administering the survey and conducting observations

Surveys were conducted at or near streets in Long Beach, CA and Santa Monica, CA where traditional white or green super sharrows are present.⁷ Researchers generally worked in pairs and approached passers-by for survey responses. The team was interested in responses from pedestrians, bicyclists, and people who had either just parked their motor vehicle on the street or were returning to it after shopping. Researchers typically opened by asking, “Do you have a moment to answer some questions about traffic?” Roughly 10-20% of passers-by who were approached ended up taking the survey. Respondents came from a diverse demographic range,

7. A copy of the original survey instrument is available from the UCLA Luskin School of Public Affairs in the Applied Public Policy report on which this chapter is based.

with no single age group, gender, or ethnicity being disproportionately represented in survey responses.

The team observed bicycle riders at a number of streets. Researchers would either stand or wait in a parked motor vehicle at a point offering them a clear view of approaching bicyclists. Because the research team did not have professional equipment designed to measure the precise distance of bicyclists from the curb, a zoning system was devised to record the positioning of traveling bicyclists. Figure 1 provides an illustration of this process: mark “A” means sidewalk riding, mark “B” means door-zone riding, mark “D” means center-of-lane riding, while mark “C” lies in between “B” and “D.”

The researcher would attempt to remain out of clear sight, so as not to affect the behavior of either bicyclists or drivers. The team was primarily interested in interactions between bicyclists and motor vehicles. Each time a bicyclist approached while riding in close vicinity to a motor vehicle, a team member would record the interaction and score it according to different metrics.⁸ If there was some doubt as to any of the safety metrics, such as distance from the curb or the following distance of a motor vehicle, a video recording would help the team member clarify these details.

8. The on-site observation form that was marked by the research team is available from the UCLA Luskin School of Public Affairs in the original Applied Public Policy report on which this chapter is based.

Figure 1.



Source: Google Street View

The general public's perception on positioning

With regard to traditional white sharrows, 37.6% of all respondents chose position "A" as a suitable position for bicyclists, and 34.0% and 27.7% chose positions "B" and "C," respectively. As to green super sharrows, 23.1% of all respondents chose position "A" as a suitable position for bicyclists, while 26.9% and 49.3% chose positions "B" and "C," respectively. The distribution of the answers is statistically significantly different at the 1% level.

Table 5: Important findings from observations.

	2 lanes, busy		1.5 lanes		1 Lane	
	Green super sharrow	no marking	White traditional sharrow	no marking	White traditional sharrow	no marking
Riding in center of lane	33.9%	1.7%	21.4%	6.8%	7.4%	8.9%
Riding in center or middle zone	82.9%	27.1%	71.4%	52.3%	51.9%	24.4%
Squeeze by among all interaction	13.8%	54.5%	11.5%	7.4%	26.2%	0.0%
Dangerous interaction (including squeezing by, passing with distance and following closely)	31.0%	81.8%	67.3%	92.6%	76.9%	96.8%
Passing using different lane proportion among all passing	0.0%	0.0%	28.3%	4.0%	14.9%	0.0%

Table 6: Observation findings of streets with free flowing traffic.

	2 lanes, white sharrows, free flowing traffic	2 lanes, green super sharrows, free flowing traffic
Riding on sidewalk	76%	71.7%
Riding in the door zone	18%	20.8%
Riding in the middle zone	6%	5.7%
Riding in the center of the lane	0%	1.9%

According to our observation data, bicyclists position themselves closer to the center of the lane with sharrow markings on most streets, which helps to reduce dooring accidents. Such accidents account for about 10 percent of all bicycle-related crashes.⁹ Furthermore, motorists

9. Cumming, B., "Analysing & Managing the Cyclist-driver Interface Using "conflict Path Analysis," *ACRS Conference & Journal Papers Database*, 2012, 1-13, accessed March 15, 2015, http://acrs.org.au/files/papers/60_Cumming-PR.pdf.

also react more politely and safely when encountering bicyclists on streets with sharrow markings (i.e., a safer interaction takes place).

Many states in the U.S. including California have passed laws that require drivers to yield three feet of distance when passing a bicyclist.¹⁰ This fact suggests that colored super sharrows can improve bicycle safety by inducing a larger passing distance from motorists when they encounter bicyclists. However, for roads with fast-moving traffic, i.e., roads where the actual traveling speed of most vehicles is over 25 M.P.H, the effect of sharrow markings is minimal. (Table 6 provides our observation findings of streets with free flowing traffic.) For busy streets, i.e., where congestion is likely to occur and thus the actual travelling speed of most vehicles does not surpass 25 M.P.H., the effect of sharrow markings is quite strong.

On streets with center turning lanes, motorists have the option to pass bicyclists using a different lane, i.e., by maneuvering into the turning lane as they pass, which in general leads to safer interactions between bicyclists and motor vehicles. Our findings indicate that the City of Santa Monica should consider installing colored super sharrows on such roads where biking could be in general safer.

Another observation is that bicyclists at the location with the green super sharrows ride closer to the center of the lane. Interactions with motor vehicles also tend to be safer there. However, survey participants at 2nd Street in Long Beach, CA—where the green super sharrows exist—actually like their presence less as compared to survey participants' views toward traditional white sharrows in other parts of the Greater Los Angeles area. The former also tend to think the green super sharrow facility is less likely to incentivize them to ride their bicycles more. Moreover, they are also less willing to share the lane with bicyclists and to have parking space or motor vehicle lanes taken out to install segregated bicycle lanes.

10. Greene, Robert, "California's New Cycling 'three-foot Rule' Stirs Some 'reader Rage,'" *Los Angeles Times*, September 30, 2013, accessed March 15, 2015, <http://articles.latimes.com/2013/sep/30/news/la-ol-cyclists-three-foot-rule-comments-20130927>.

According to our interviews with these respondents, they do not like the idea of sharing the road with bicycles because they insist that there already is a lot of traffic in the Belmont Shore Community Commercial District area. Most people believe that adding bicycle traffic to already-congested roads will only create more problems to that end. However, most people also do not notice that moving people from motor vehicles to bicycles could potentially *reduce* motor vehicle traffic and thus mitigate congestion. They also are unaware that on such congested streets, it is usually safer for bicyclists to ride since the difference in speed between them and motor vehicles is very small. Therefore, in reality, interactions are much safer, despite the fact that there are more interactions. In our view, the City of Santa Monica should conduct public education campaigns to make bicycle facilities such as sharrows more effective.

Cost analysis of colored super sharrows

The green thermoplastic used for colored super sharrow lanes costs \$9 per square foot and lasts for about ten years. The bicycle lane is five feet wide, and every one hundred feet of sharrow lane requires a sharrow symbol which costs \$388. Therefore, every one hundred feet of green super sharrow costs $\$(5 \times 100 \times 9) + \388 , for a total of \$4,888 per 100 feet, or \$258.086 per mile for a lane that will last ten years. This results in an amortized annual cost of \$32,097 per mile assuming an interest rate of 4.5%.

Since Santa Monica already has green-colored segregated bicycle lanes installed on some streets, we recommend the city to consider other colors for super sharrow lanes to avoid confusion, such as yellow or blue. Because other super sharrow projects to date have used the color green, there is no price information available for other colors, but we assume the cost will be very similar to those associated with the green super sharrows.

The other option for green sharrows' material is paint, which is also what the City of Long Beach used for its 2nd Street green super sharrow project during its initial implementation. The material cost was much less at roughly \$10,000 for a 0.7 mile stretch, or \$14,285 per mile, plus the cost of labor. However, the green paint lasts only 2 years, while thermoplastic lasts 10

years. Furthermore, bus drivers in Long Beach have reported traction issues for buses when driving over the green paint, although this has not led to any safety problems to date.

Finally, a white sharrow facility costs roughly \$10,560 per mile if markings are placed every 100 feet, and will need to be replaced about every two years.

Safety

Our study indicates that sharrow lanes do result in bicyclists on average riding closer to the center of the lane, particularly on streets with lower speed limits and a center lane for turning. This behavior has two positive effects on rider safety. First, it reduces the incidence of dooring accidents, and second, it promotes safer interactions between bicyclists and motorists by discouraging motorists from trying to squeeze by or pass bicyclists at a very close distance.

However, if sharrow lanes increase overall bicycle ridership, the total number of collisions involving bicycles may increase, even if collisions on a per rider basis are lower. Due to the much lower level of protection a bicycle offers, collisions have far more severe consequences for bicyclists than for motorists. In particular, the rate of fatal accidents for bicyclists is higher than for motorists. On the other hand, bicycles cause far less harm than motor vehicles when they collide with pedestrians, and pedestrians have a higher rate of fatal accidents per kilometer traveled than either motor vehicles or bicycles. Shifting travelers from motor vehicles to bicycles will reduce the lethality of collisions involving pedestrians and other bicyclists.

Determining the total public safety effect of increased bicycle riding will require additional studies. However, we believe that colored super sharrows are a good policy from an equity perspective because bicyclists bear nearly all the risks of collisions in the form of direct harm to their persons. In contrast, motorists externalize far more of the risk they pose.

Ridership

There are two main mechanisms by which super sharrow lanes can increase bicycle ridership. First, improving the perception of bicycle safety would encourage more people to ride. Our

survey data showed that safety is the single biggest concern for potential bicyclists, with 79.7% of survey respondents citing safety as a concern when they think about bicycling. More than half of respondents (53.3%) stated that they would likely ride more if sharrows were installed.

Second, new super sharrow lanes can act as links between existing networks of bicycle infrastructure, allowing bicycle travel between regions that were previously inaccessible or difficult to access on bicycle. Previously discontinuous bicycle routes could be joined together with these new linkages, resulting in a much larger bicycle network with completely new commuting routes. Increasing the number of routes available to be traveled by bicycle should encourage more people to substitute bicycling for driving.

Health benefits

Americans today are more sedentary than they were in previous generations.¹¹ Automatic home appliances and increased use of automobiles have removed much of the physical activity from American people's daily lives. Studies have shown that even short periods of weekly exercise can positively affect health.¹² A 2010 study by the Copenhagen City of Cyclists valued the average health benefit of cycling at \$0.85/mile.¹³

External benefits

While bicycles can decrease congestion on heavily trafficked streets with slower average speeds by substituting for much larger motor vehicles, increasing bicycle traffic on faster-moving streets could increase congestion by forcing motorists to slow down. The total effect of increased bicycle ridership on congestion is unclear and depends on which streets are targeted

11. Wellness, Berkeley, "More Sedentary Americans than 20 Years Ago," @berkeleywellness, December 01, 2014, accessed March 13, 2015, <http://www.berkeleywellness.com/fitness/active-lifestyle/article/more-sedentary-americans-20-years-ago>.

12. "Cycling - Health Benefits - Better Health Channel." Better Health Channel, accessed March 12, 2015, http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Cycling_health_benefits.

13. City of Copenhagen, *Copenhagen City of Cyclists Bicycle Account 2010*, report, May 2011, accessed March 16, 2015. <http://www.cycling-embassy.dk/wp-content/uploads/2011/05/Bicycle-account-2010-Copenhagen.pdf>.

for bicycle infrastructure improvements. Sharrows installed on already congested streets or streets with center lanes would be more effective at reducing traffic.

If new bicyclists are people who previously walked or used public transit, then the bicycle ridership increase will not result in a congestion reduction since we are not reducing motor vehicle traffic here. Rather, bicycles could obstruct bus operation, and if the wrong materials are used for the colored super sharrows, there can be slippery road conditions for buses. Therefore, in areas with lower household income such as downtown Long Beach, installing bicycle facilities might not result in the mitigation of traffic congestion. However, that does not mean such facilities should not be installed there. In such cases, bicycles offer door-to-door transportation and freedom of travel when one cannot afford a motor vehicle. People who can't afford the latter should still be allowed to use the road safely—and the government should particularly try to provide more travel options and better transportation experiences to offer equal opportunities for the economically disadvantaged.

The United States currently has one of the highest rates of greenhouse gas (GHG) emissions per capita in the world.¹⁴ And while air quality in Los Angeles has improved considerably over the past two decades, the area is still one of the most polluted in the United States, and smog remains a public health threat for Los Angeles residents.¹⁵ Because bicycles produce virtually no emissions, commuters substituting bicycling for driving would reduce total GHG emissions in the region. In addition, manufacturing a bicycle creates less adverse environmental impact than manufacturing a motor vehicle.

More motorists switching to bicycles would also reduce road wear. Because bicycles weigh much less than motor vehicles, they cause much less damage per mile traveled, increasing the amount of time required between costly road repairs. The Victoria Transport Institute estimates

14. "Each Country's Share of CO₂ Emissions," Union of Concerned Scientists, November 18, 2014, accessed March 12, 2015, http://www.ucsusa.org/global_warming/science_and_impacts/science/each-countrys-share-of-co2.html.

15. DeSocio, Jeffrey Thomas, "Despite Improvements, LA Still Has Worst Air Quality in US," Los Angeles News, April 30, 2014, accessed March 13, 2015, <http://www.myfoxla.com/story/25390011/despite-improvements-la-still-has-worst-air-quality-in-us>.

an average public benefit of \$0.39 per passenger mile from shifting commuters from motor vehicles to bicycles.¹⁶

Total benefits and costs

Using the calculation showing reduced driving costs of \$0.39 per mile, as well as the monetary value of bicycling as a form of exercise, which is calculated at \$0.85 per mile, we arrived at a total monetary benefit of \$1.24 per mile of bicycling. Table 7 provides these data.

Table 7: Monetary benefits of bicycling.

	Dollar per mile of added bicycle travel
Reduced driving cost	\$0.39
Added benefit from exercise	\$0.85
Total benefit	\$1.24

We calculated the benefit-cost ratio of colored super sharrow lanes in two different scenarios: a high-volume street and a low-volume street. According to LADOT, the average daily traffic volume on Abbot Kinney Boulevard at the intersection with Main Street is 12,479 on a weekday.¹⁷ We classified Abbot Kinney as a busy street and estimated that installing colored super sharrow markings on a street with this type of traffic volume would result in a benefit to

16. "6. Cost Summary and Analysis," In *Transportation Cost and Benefit Analysis Techniques, Estimates and Implications*, 6-10, Second ed., Victoria, 2009, accessed March 15, 2015, www.vtpi.org/tca/tca06.pdf.

17. "Los Angeles Department of Transportation," Current Count Data: Department of Transportation: City of Los Angeles, accessed March 13, 2015, http://ladot.lacity.org/stellent/groups/Departments/@LADOT_Contributor/documents/Contributor_Web_Content/LACITYP_023704.xls.

cost ratio of 3.8. Less busy streets with average daily traffic of 5,000 motor vehicles would see a much lower benefit to cost ratio of around 1.6. Table 8 summarizes these data.

Table 8: Benefits and costs of colored super sharrow lanes in two different scenarios.

	Amortized annual cost of installing 1 mile of colored sharrow that will last 10 years	ADT	VMT per year	Increased bicycle miles traveled per year	Total benefit	Benefit to cost ratio
Busy streets with ADT of 12,000	32,097	12,000	4,380,000	99,044	122,815	3.8
Moderately bust street with ADT of 6,500	32,097	6,500	2,372,500	53,649	66,525	2.1
Less busy street with ADT of 5,000	32,097	5,000	1,825,000	41,268	51,173	1.6

Note: VMT = Vehicle Miles Traveled

With an Average Daily Traffic (ADT) value of 6,500, we calculated a benefit to cost ratio of 2.1. Considering the potential margin of error of this study, we believe that 6,500 average motor vehicles per day is the threshold at which installing colored super sharrows would be a safe investment.

We also used the direct bicycle ridership increase data from the Long Beach, CA study to calculate the benefits of a colored super sharrow lane using the same benefit-per-bicycle-mile number, and this calculation shows a similarly high benefit to cost ratio (Table 9):

Table 9: Long Beach Scenario.

	Amortized annual cost	Ridership increase per day	Increased bicycle miles travelled per year	Total benefit	Benefit- cost ratio
Long Beach, CA study	32,097	392	143,080	177,419	5.5

Colored super sharrows vs. traditional white sharrows

While white sharrow markings are much less expensive than a colored super sharrow lane, they also increase ridership by a lower amount. The cost difference is high enough that traditional white sharrows have a better benefit-cost ratio than colored super sharrow lanes even at a low volume of traffic. However, at high traffic volumes, the incremental benefit-cost ratio of installing a colored super sharrow lane is still positive. The ratio suggests that converting traditional white sharrows to colored super sharrow lanes on the busiest streets could still be a worthwhile investment. At low traffic volumes, the incremental benefit-cost ratio is less than one, indicating that colored super sharrows are a poor investment on these streets.

Policy recommendations and study limitations

Based on our research and a review of the existing literature, we find that sharrows are an effective way to improve bicycle safety and are very likely to increase bicycle ridership where they are installed. Our specific recommendations to the City of Santa Monica regarding if and

where to install colored super sharrows are as follows:

1. High traffic volume streets could switch from traditional white sharrow markings to

colored super sharrows: We recommend installing colored super sharrows only on busy streets with relatively high traffic volumes and low average travelling speed (bi-directional average daily traffic >8000), which already have some congestion. There are three reasons for this suggestion. First, when motor vehicles are travelling at a lower speed, it will be safer for them and bicycles to share the road since the difference in speed between the two would be smaller. As our observations show, motor vehicles are less likely to attempt to squeeze by bicyclists or make dangerous interactions when traveling at a lower speed.

Second, on busy streets where motor vehicles are already restricted in speed due to congestion, motorists won't be blocked by bicyclists travelling at lower speeds. Instead, many bicyclists will pass motor vehicles as shown by our observations. In this case, moving people from motor vehicles to bicycles is more likely to *reduce* congestion, not increase it.

Third, on streets with higher traffic volumes, the potential amount of added bicycle ridership as a result of colored super sharrows will also be higher. Given the relative high cost of colored super sharrows, only very busy streets can yield a positive incremental benefit-cost ratio over traditional white sharrows.

2. Sharrows are more efficacious on roads with center turning lanes: For busier streets with one lane on each direction and a center lane for left-turning, we particularly recommend the installation of colored super sharrows. Our observation results show that interactions between motor vehicles and bicycles are safer on such streets. When a motorist tries to pass the bicycle in front of her/him, she or he has the option to use the center lane to pass; with sharrow markings motorists are indeed motivated to do so to avoid creating danger for bicyclists. Our analysis did not consider the potential of human lives saved, but installing colored super sharrows on streets that can gain the largest improvement in safety metrics is likely to result in the most lives saved in the long term.

3. The implementation of public education campaigns: Although our research indicates that bicycle sharrows are more effective on busier streets, our public opinion survey shows that many people would not agree. The general public is more likely to be upset with bicycle sharrow projects on such roads, because they think adding bicycles to streets that already have heavy traffic will only exacerbate traffic. Many people would rather have sharrows on streets with free-flowing traffic instead.

Therefore, along with installing colored super sharrows, the City of Santa Monica should also implement a public education campaign educating people that adding bicycles to congested streets can actually reduce traffic and is beneficial for both motorists and bicyclists. This campaign can be achieved with bench advertising at various bus stops, educational material prominently displayed inside city buses, and, where possible, outdoor marquee signs on light poles along the streets that contain the colored super sharrow markings.

4. Experiment with colored super sharrows: Our analysis suggests exploring the option of covering less than 100% of colored super sharrow lanes with thermoplastic in order to cut costs on their installation.

Future studies like ours can ultimately be improved if the following limitations are addressed: 1) more data are gathered on the change in bicycle ridership; 2) omitted causal variables are considered and addressed in a bicycle count study; and 3) professional equipment, such as strategically placed high definition cameras and measuring wheels, are utilized to obtain more precise measurements of interactions between bicyclists and motorists and bicyclist positioning on roads.

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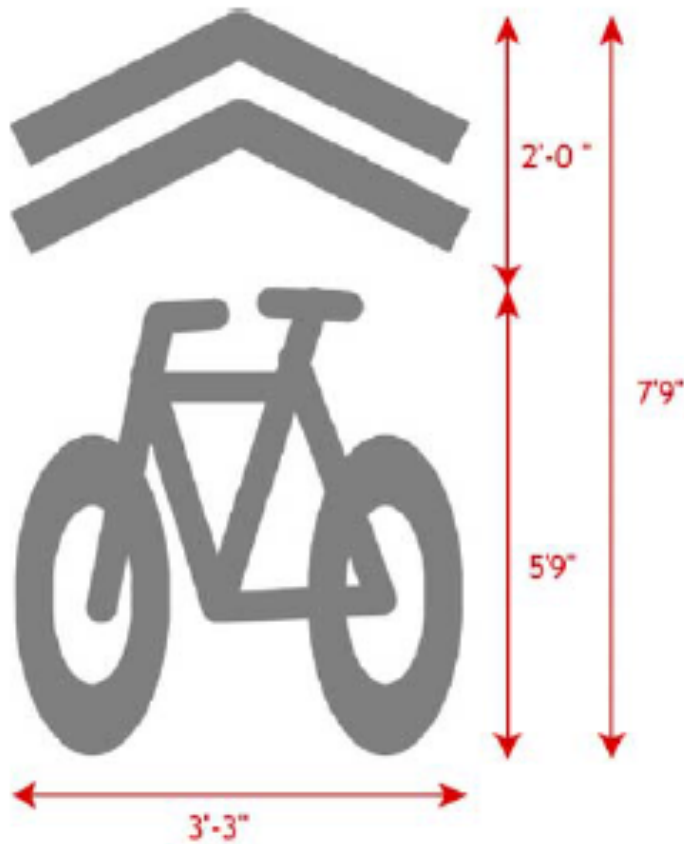
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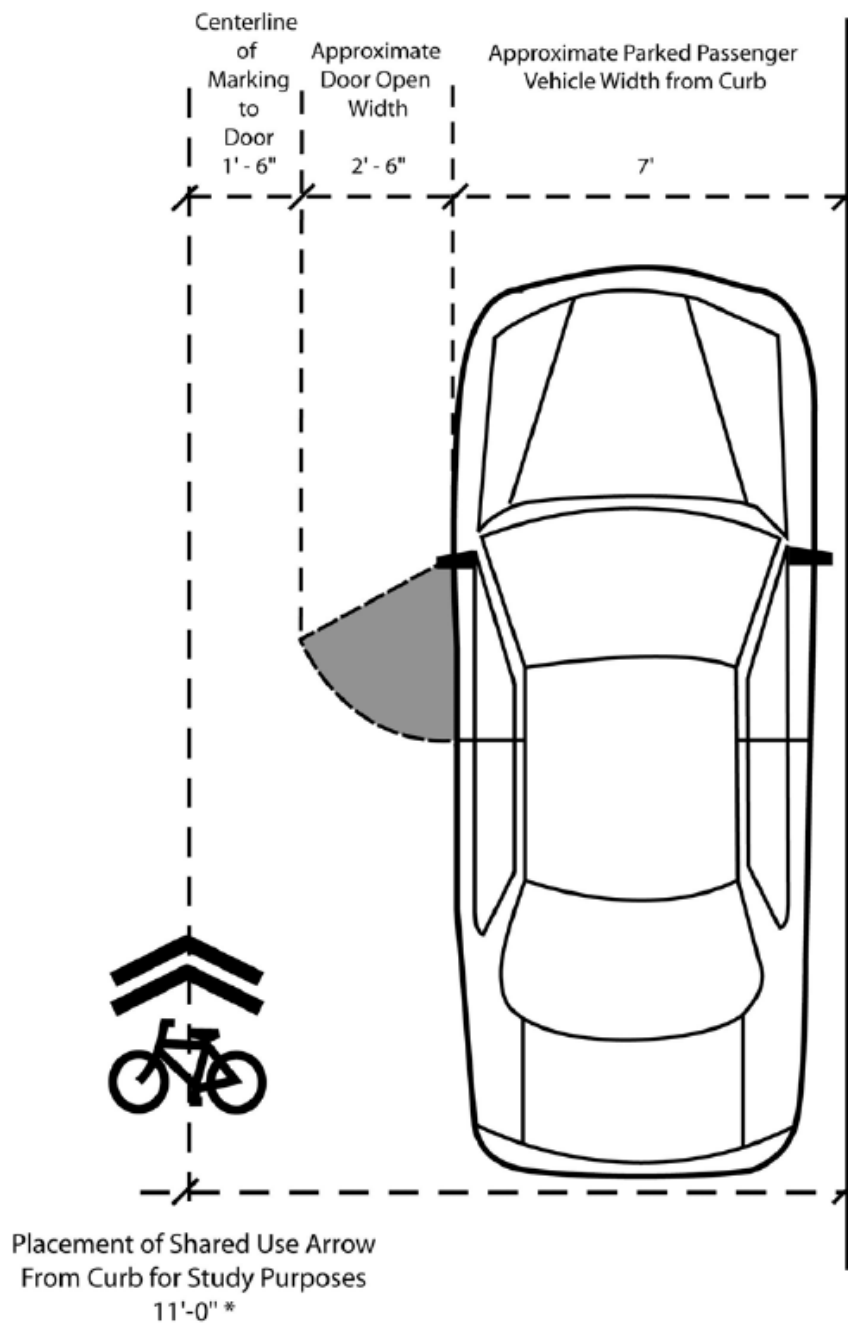
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Appendix

Design of white shared lane marking (traditional “sharrow”) with bicycle silhouette and chevron symbols



Source: Alta Planning + Design. *San Francisco's Shared Lane Pavement Markings: Improving Bicycle Safety*, report, February 2004, accessed March 8, 2015, 4, <http://nacto.org/wp-content/uploads/2010/08/San-Franciscos-Shared-Lane-Pavement-Markings-Improving-Bicycle-Safety.pdf>.



- * This placement is based on the following:
- 85th percentile of car doors observed opened to 9'6" from curb (per DPT field observations).
 - Average width of bicycles is 2'.
 - 6" clearance from door to bicycle handlebar is desired minimum "shy distance".

Source: Alta Planning + Design. *San Francisco's Shared Lane Pavement Markings: Improving Bicycle Safety*, report, February 2004, accessed March 8, 2015, 6, <http://nacto.org/wp-content/uploads/2010/08/San-Franciscos-Shared-Lane-Pavement-Markings-Improving-Bicycle-Safety.pdf>.

Installation of a traditional white sharrow marking on Fountain Ave. in Los Angeles, CA



Source: De La Vega, Jaime, *Shared Lane Marking Study: Final Report*, report, Los Angeles: Los Angeles Department of Transportation, 2011, accessed March 8, 2015, 7, https://ladotbikeblog.files.wordpress.com/2011/06/ladot_slm_final_report_062211.pdf.

Sharrow marking embedded in green lane (colored “super sharrow”) in Salt Lake City, Utah



Source: "Request for Permission to Experiment for a Bicycle Lane Project in the City of Long Beach, California (RTE 9-113E)," Mark Christoffels, P.E. to Mr. Bruce Friedman, April 28, 2009, accessed March 8, 2015, 3, [http://www.atssa.com/galleries/default-file/9-113\(E\)-Green_Incoming-LongBeachCa-5-12-09.pdf](http://www.atssa.com/galleries/default-file/9-113(E)-Green_Incoming-LongBeachCa-5-12-09.pdf).

Sharrow marking embedded in green lane in Long Beach, California



Source: Research team

CHAPTER 3

Falling Voter Turnout Rates in California

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The 2014 midterm elections in the United States drew significant media attention for generating the lowest voter turnout in 72 years.¹ On the national scale, voter turnout amounted to just 36.3% of the eligible voting population—the lowest such figure since the 1942 midterm elections, where 33.9% of eligible voters turned out.² This development was characterized as “bad for Democrats...but even worse for democracy.”³ Therefore, it is important to give this issue a long look, and for reasons to be discussed shortly, even more important to focus on the issue in California specifically.

In this chapter, a quantitative and qualitative analysis of voter registration and other partisan, ideological, and demographic statistics will be presented. That analysis is a necessary first step to see if there is a factual basis underlying the belief that low voter turnout rates are in fact a negative development for democracy. The analysis will rely on data from the largest state in the U.S.: California.

During the 2014 midterm election cycle, California actually reported an even lower figure than the national average, with a preliminary voter turnout figure of just 31.8% of eligible voters.⁴ Eventually, this figure was revised further downward, to a paltry 30.9%.⁵ One objective of an historical, quantitative analysis of voter registration, turnout, and demographic data on the statewide level is to determine if the present-day numbers in the state are simply periodic symptoms of ongoing, systemic temporal trends. A second, more significant question is to determine if low turnout is likely to continue into the future in California.

In addition, in keeping with the conventional wisdom that “all politics is local,” a similar analysis of a given county and city will also be presented to determine if the situation at the local level

¹Editorial Board, “The Worst Voter Turnout in 72 Years,” *New York Times*, November 11, 2014, accessed February 20, 2015, <http://www.nytimes.com/2014/11/12/opinion/the-worst-voter-turnout-in-72-years.html>

²Ibid.

³Ibid.

⁴Ibid.

⁵California Secretary of State, “Historical Voter Registration and Participation in Statewide Elections 1900-2014,” *Voter Registration Statistics – California Secretary of State*, accessed February 20, 2015, <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/04-historical-voter-reg-general.pdf>

mirrors the statewide situation. This step will also look for any other trends or differences between the state and local levels that should be taken into account when trying to arrive at a policy solution for the problem of low voter turnout rates. The chapter then concludes with possible policies that might address low turnout.

Why Low Voter Turnout is a Problem

A republican form of government envisions citizens voting to elect officials who represent both their geographic location and ideological preferences. In California, much as in the rest of the United States, continuous elections—once every two years for the state assembly and once every four years for the governorship and the state senate—are the chief mechanism through which voters can punish elected officials for failing to reflect their will through votes and policy. Various factors lead to a deviation from this ideal. Of these factors, perhaps the most noteworthy are the passage of ballot initiatives that have constrained the state legislature over the years. California is hardly alone among governments in the United States or elsewhere in having these kinds of flaws. However, low voter turnout in California amplifies such problems.

With low turnout, voters who participated in the most recent midterm election do not actually reflect the eligible voting population of California. Instead, there is a visible disparity between the actual voters and eligible voters across three fronts—voter registration, partisanship and ideology, and demography. Should the low rates of voter participation persist, the policies pursued and enacted by elected officials will move further away from being an accurate reflection of the popular will.

Eligible Voters, Registered Voters, and Voter Turnout

In the 2014 midterm elections, California had 24.3 million *eligible* voters.⁶ Of this figure, 17.8 million were actually *registered* voters. In other words, only 73.3% of eligible voters were registered to vote.⁷ Based just on registered voters, the voter turnout rate was still not high,

⁶Ibid.

⁷Ibid.

checking in at only 42.2% of the total.⁸ The turnout rate of *eligible* voters was the low figure of 30.9% referenced earlier. In effect, 30.9% of the eligible voters determined the results of an election that would have ramifications for the entire population of the state, an obvious problem as far as democratic legitimacy is concerned.

Partisanship, Ideology, and Voter Turnout

At the close of the 2014 midterm election cycle, of the 17.8 million registered voters in California, 7.7 million were registered Democrats, accounting for 43.3% of the total.⁹ There were 5.0 million registered Republicans, comprising 28.1% of the registered voter total.¹⁰ Finally, the remaining 5.1 million registered voters were unaffiliated with the two major parties, making up the remaining 28.6% of all registered voters in the state.¹¹

However, even these figures do not tell the whole story. This is because, as indicated by the fact that even turnout rates of registered voters are low, only a specific subset of eligible and registered voters are considered “likely” to turn out for elections. In fact, most of the survey data at the present time strongly implies that there is significant gulf in the partisan and ideological sentiments of registered voters and the voters that are actually likely to vote.

Among those considered “likely voters” in California—a judgment typically made on the basis of responses to surveys carried out in the months preceding an election—44% self-identified as Democrats, 32% as Republicans, 19% as independents, and 6% as members of another third party.¹² Of likely independent voters, 40% reported leaning toward the Democratic Party, 29% leaned Republican, and 31% professed no inclination toward either party.¹³

⁸Ibid.

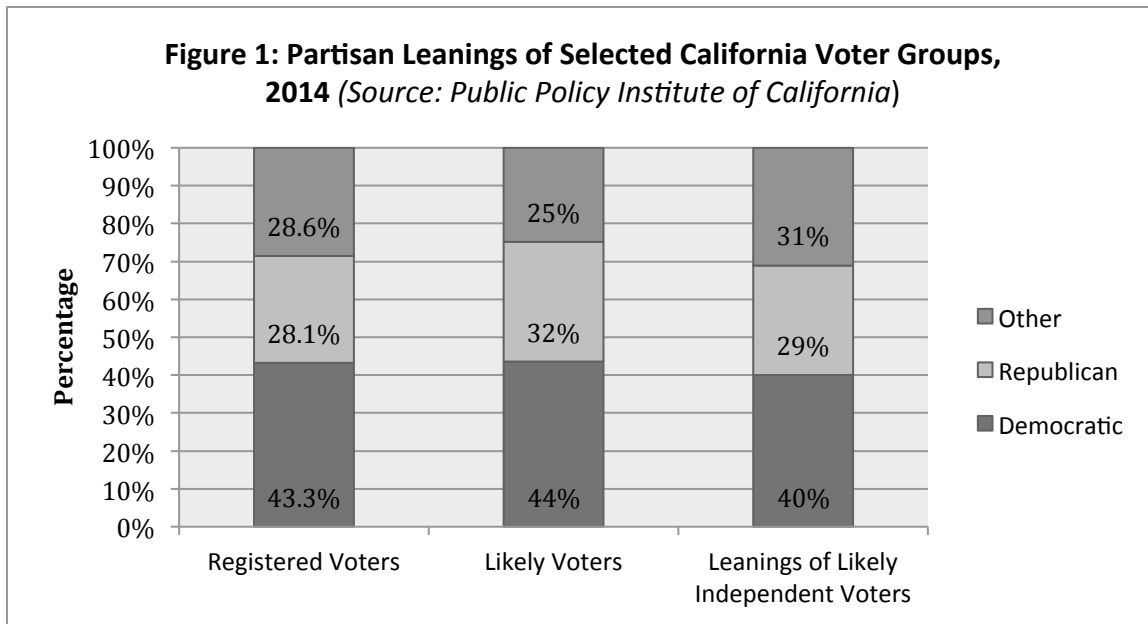
⁹Ibid.

¹⁰Ibid.

¹¹Ibid.

¹²Mark Baldessare, Dean Bonner, and Jui Shrestha, “Just The Facts: California’s Likely Voters, August 2014,” *Public Policy Institute of California*, accessed February 21, 2015, http://www.ppic.org/content/pubs/jtf/JTF_LikelyVotersJTF.pdf

¹³Ibid.



Interestingly, however, the ideological preferences of likely voters in the state do not appear to cleanly correlate with professed party identification or preference, as 34% of this group reported themselves as “liberal,” whereas 29% answered as “moderates” and 38% as “conservatives.”¹⁴ Moreover, of the likely voters identifying as Republicans, 69% are self-described conservatives, with moderates and liberals comprising 23% and 7%, respectively.¹⁵ The reported ideological inclinations of likely Democratic voters are 55% liberal, 28% moderate, and 17% conservative.¹⁶ Independents, meanwhile, responded as 28% liberal, 39% moderate, and 33% conservative.¹⁷

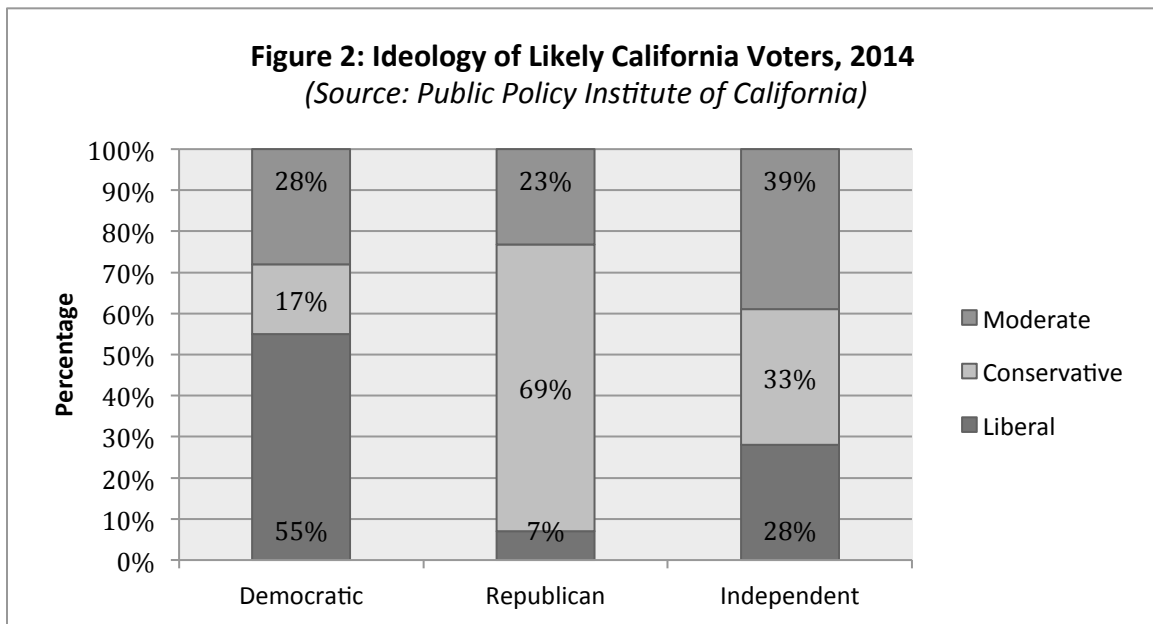
The implication of these discrepancies is that the ideological positions and enacted policies of the statewide parties do not lend themselves to perfect ideological separation between liberals and conservatives. Thus, there is another source of distortion, as far as electoral results serving as an accurate reflection of the ideological preferences of the

¹⁴ Ibid.

¹⁵ Mark Baldessare, Dean Bonner, and Jui Shrestha, “Just the Facts: California Voter and Party Profiles, August 2014,” *Public Policy Institute of California*, accessed February 21, 2015, http://www.ppic.org/content/pubs/jtf/JTF_VoterProfilesJTF.pdf

¹⁶ Ibid.

¹⁷ Ibid.



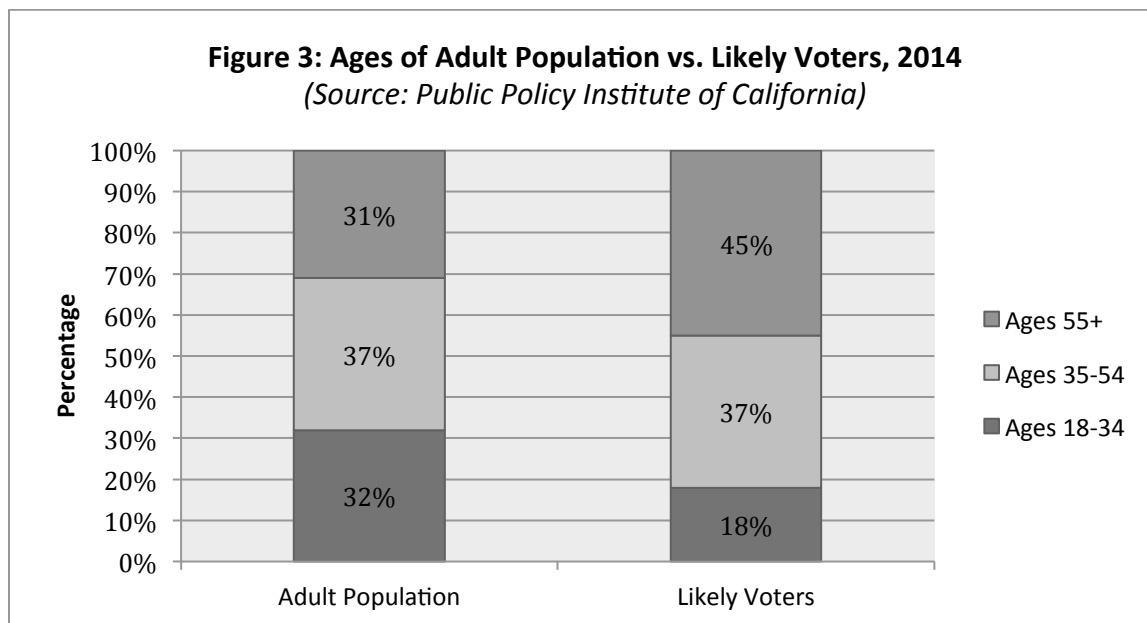
population at large is concerned. The California Republican Party is a much more ideologically unified, partisan organization than its Democratic counterpart is, which is why the latter party is capable of consistently winning elections in the state despite possible ideological disadvantages among likely voters. However, neither party is capable of providing a close reflection of popular or voter preferences in the state. That fact may be one of the factors producing voter “apathy” and low voter turnout.¹⁸

Demographic and Economic Characteristics of Likely Voters

In addition to the numerical disparities between eligible and registered voters and in addition to significant ideological and partisan differences, a final set of characteristics separating eligible and likely voters are demographic in nature. Just as the voter registration process itself ensures a drop from eligible to registered voters during each election cycle, a variety of demographic factors have a negative effect on voter turnout. Among the most significant of these characteristics are ethnicity, age, education, and income.

¹⁸Editorial Board, “The Worst Voter Turnout in 72 Years,” *New York Times*, November 11, 2014, accessed February 20, 2015, <http://www.nytimes.com/2014/11/12/opinion/the-worst-voter-turnout-in-72-years.html>

Where ethnicity is concerned, the typical likely voter in California differs significantly from the pool of eligible voters. For example, although they comprise only 44% of the total adult population in California, whites nevertheless account for 62% of all likely voters.¹⁹ By comparison, Latinos comprise just 17% of likely voters despite accounting for 34% of the adult population.²⁰ This disparity is less pronounced in other ethnic groups; Asians make up 14% of the adult population and 11% of likely voters, blacks represent 6% of both the adult population and likely voters, and other individuals similarly represent 3% of both groups.²¹ In addition, the likely voter in California tends to be disproportionately older when compared to the actual population of the state. Despite amounting to 31% of the adult population, adults 55 years of age and over comprise 45% of likely voters.²² Meanwhile, young adults aged 18-34 constitute just 18% of likely voters despite being 32% of the total adult population, leaving only the 35-54 year old age group proportionally represented in both the population and the pool of likely voters, at 37% apiece.²³



¹⁹ Mark Baldessare, Dean Bonner, and Jui Shrestha, “Just The Facts: California’s Likely Voters, August 2014,” *Public Policy Institute of California*, accessed February 21, 2015, http://www.ppic.org/content/pubs/jtf/JTF_LikelyVotersJTF.pdf

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

Likely voters in California also tend to be better educated than the eligible voters in the state. Forty-one percent of likely voters have at least a bachelor's degree, while an additional 41% have at least some college education following high school; just 18% of likely voters have no college education.²⁴ In contrast, U.S. Census Bureau American Community Survey data for 2014 indicated that 30.7% of Californians aged 25 or over held at least a bachelor's degree, while 29.9% had some college experience, and 39.4% had no college education.²⁵

Moreover, likely voters are more affluent than the pool of eligible voters as whole. As a group, 41% of likely voters have a median household income over \$80,000 annually, 30% earn between \$40,000 and \$80,000 annually, and the remaining 29% earn below \$40,000 a year.²⁶ For all Californians, the median household income in 2013 was \$57,500.²⁷

The Status Quo

There are multiple disparities between the citizen adult population of the California—the eligible voters—and the voters that are actually expected to vote, the likely voters, themselves just a subset of registered voters. As the data provided earlier illustrate, likely voters at the present time already differ greatly from eligible voters, and quite probably from registered voters as well. Voters who participate in low-turnout elections differ systematically from eligible voters.

The Statewide Past and a Possible Future

The Office of the California Secretary of State holds voter registration and participation data on elections dating back to 1910. However, these statistics do not distinguish between party affiliations until 1922. Therefore, for reasons of data availability, this chapter's analysis of eligible and registered voters regarding voter turnout covers the years 1922 to 1970, and 1972

²⁴ Ibid.

²⁵ "California QuickFacts," *U.S. Bureau of the Census*, accessed February 22, 2015, <http://quickfacts.census.gov/qfd/states/06000.html>

²⁶ Mark Baldessare, Dean Bonner, and Jui Shrestha, "Just The Facts: California's Likely Voters, August 2014," *Public Policy Institute of California*, accessed February 21, 2015, http://www.ppic.org/content/pubs/jtf/JTF_LikelyVotersJTF.pdf

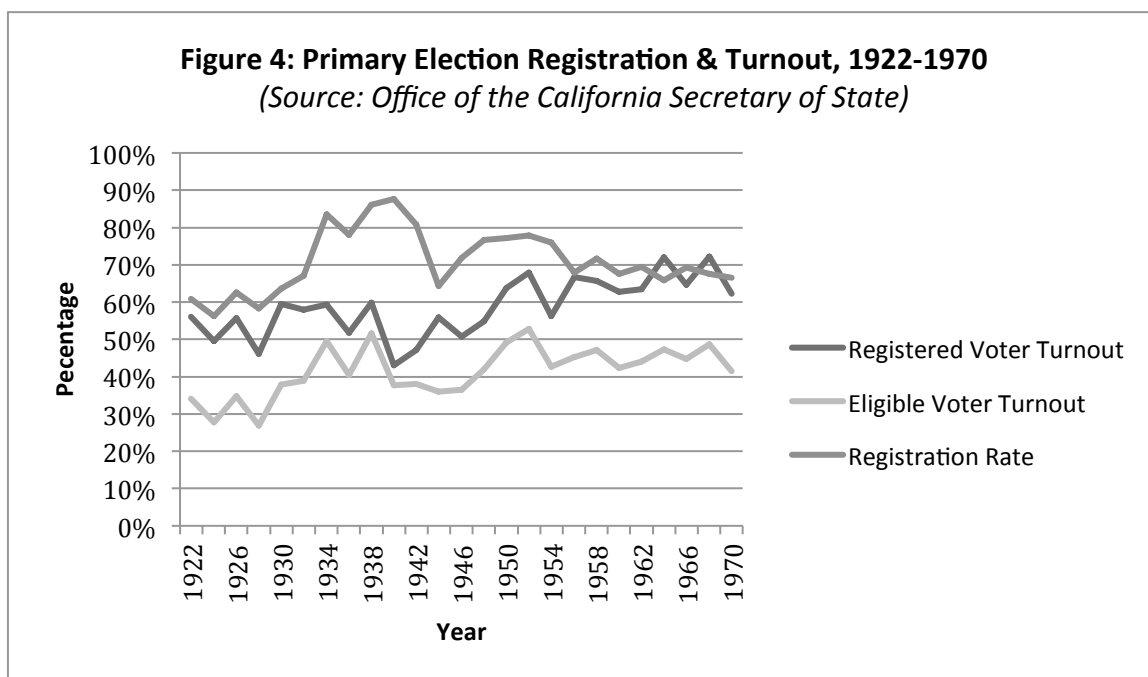
²⁷ Sarah Bohn, "California's Future: Economy—February 2015," *Public Policy Institute of California*, accessed February 22, 2015, http://www.ppic.org/content/pubs/report/R_215SBR.pdf

to the most recent election available at this writing of 2014.

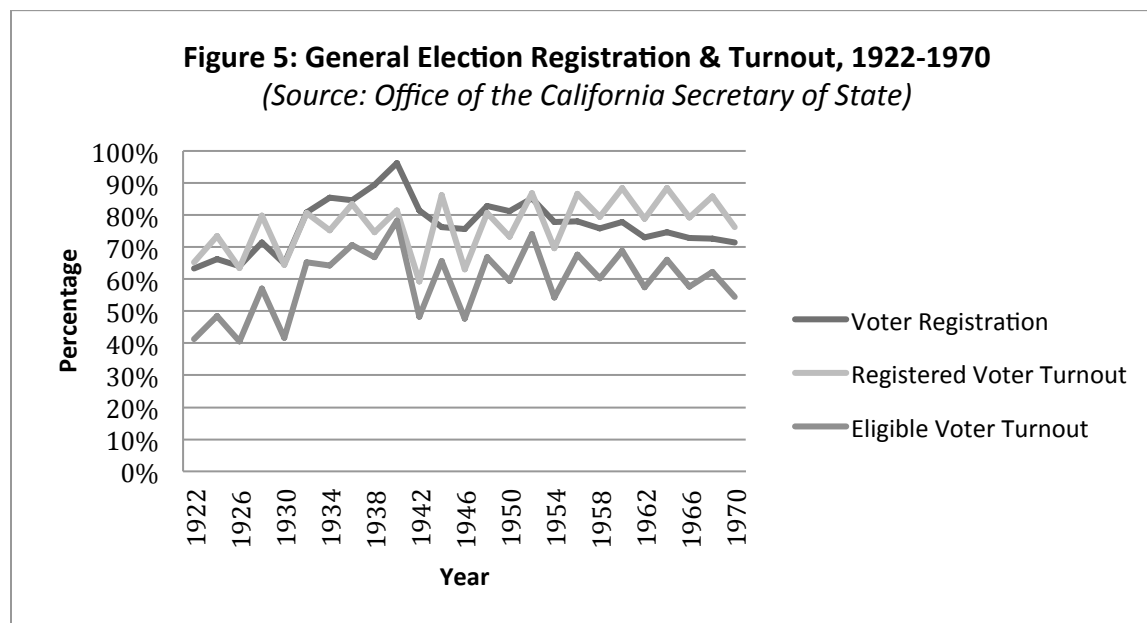
The 1972 election cycle was chosen as the dividing point for analysis because, from a historical standpoint, it marked something of a watershed moment in California politics. The 26th amendment to the U.S. constitution—which lowered the voting age to 18—took effect for the first time in the 1972 election cycle. Despite some surprising results that year, 1972 marked the transition to a new era of voter behavior in the state. Voter turnout rates have declined significantly in the years since 1972, ultimately dwindling to their present levels. Moreover, this trend is visible in both phases of the electoral process—the primary election and the general election.

Overview—1922 to 1970

Generally speaking, there are two recurring trends visible in all datasets concerning voter turnout during elections in the United States, regardless of location, jurisdictional level, or time period. The first of these trends is that voter turnout tends to rise during presidential election years, but decline in off-year midterm election years. Second, turnout and registration data indicate that voter participation is significantly lower during primary election campaigns than during general elections. Voter turnout and registration data during primary elections from 1922 to 1970 can be seen on Figure 4.



The data above show that voter registration in the state experienced a clear peak in the late 1930s and early 1940s. Where turnout is concerned, registered voter turnout did fluctuate somewhat based on the year, as indicated earlier. However, historically, registered voter turnout tended to remain above 50% and was often over 60% during this time period. Eligible voter turnout surpassed 50% twice, in 1938 and 1952, and generally stayed over 40% by the late 1940s. Figure 5—which covers turnout and registration data in general elections over this time period—illustrates another ongoing statistical trend when compared with Figure 4.



The data above reveal that the turnout of both eligible and registered voters was significantly higher during general elections. However, the fluctuations between presidential and midterm election years is more pronounced during general elections than during primary election campaigns. It is also worth noting that the smallest differential between the two datasets was in voter registration. However, voter registration rates in general elections still surpassed the numbers seen during primary elections.

Prior to 1944, primary elections during presidential election years were a two-part process in California—the presidential primary took place in June, and the primary for all other offices

took place in August.²⁸ After 1944—when both primaries took place in May—the calendar shifted, with primary elections for all offices taking place in June from 1946 until 1996. Therefore, over the relevant years, the numbers for the preceding graphs used the June elections in presidential cycles, and the August elections in midterm cycles.

The most eye-catching trends from the general election data are the high rates of political participation. For example, during the 1940 election cycle, the voter registration rate reached an incredible 96.2%, a height that has not been matched before or since.²⁹ Similarly, the mean rate of voter registration over this time frame was 76.9%, while the mean rate of registered voter turnout was a nearly identical 76.9%. During that time, registered voter turnout fell below 50% only once, in 1942.³⁰ In fact, between 1932 and 1970, the eligible voter turnout rate fell below 50% only twice, in the midterm election cycles of 1942 and 1946, and over the length of the entire 1922-1970 time frame, the mean rate of eligible voter turnout was 59.4%.

In addition to the obvious trends discussed earlier, there are four more significant ongoing trends visible from the pre-1972 data. First, both the registration and turnout rates tended to increase from the June presidential primary (when applicable) to the August primary to the November general election.³¹ Second, the gulf in participation between primary election and general election participation was not noticeably extreme. Third, the voter registration rate was somewhat prone to fluctuation (though not to the same extent as turnout rates were.) Finally, from 1922 to 1970, the primary election registration and turnout patterns do not exhibit the same exaggerated zigzag pattern that the general election figures do. However, none of these statistical trends survive into the present day.

²⁸ California Secretary of State Alex Padilla, “Historical Voter Registration and Participation in Statewide Primary Elections 1914-2014,” *Voter Registration Statistics – California Secretary of State*, accessed July 17, 2015, <http://elections.cdn.sos.ca.gov/sov/2014-primary/pdf/04-historical-voter-reg-primary.pdf>

²⁹ California Secretary of State, “Historical Voter Registration and Participation in Statewide Elections 1900-2014,” *Voter Registration Statistics – California Secretary of State*, accessed February 20, 2015, <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/04-historical-voter-reg-general.pdf>

³⁰ Ibid.

³¹ Ibid.

1972 to 2014 and Future Projections

As indicated earlier, the 1972 election cycle marked a turning point for voter participation—even though this did not appear obvious at the time. In the context of the voter participation statistics seen from 1922 to 1970, the statistics seen in 1972 were not unprecedented. However, the 1972 election cycle marked the last time the turnout of all registered voters in California would exceed 80%, as well as the last time that the turnout of all eligible voters surpassed 60%.³² From 1972 to 2014, the mean registered and eligible voter turnout rates were just 62.0% and 45.5%.

Thus, the 1972 election cycle marked the start of the modern era in electoral politics in California. The 42 years between 1972 and 2014 have been defined not just by declining turnout, but also by three ongoing trends that, together, mark a stark departure from the preceding era. First, the gulf in participation between primary election cycles and general elections has widened significantly. Second, voter registration rates have effectively stabilized slightly above 70%, showing none of the fluctuations the statistic once did. Finally, the presidential election-focused zigzag pattern seen only in general elections from 1922 to 1970 has since become typical of primary election cycles as well. These statistical changes can be seen in Figures 6 and 7.

³²California Secretary of State, “Historical Voter Registration and Participation in Statewide Elections 1900-2014,” *Voter Registration Statistics – California Secretary of State*, accessed February 20, 2015, <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/04-historical-voter-reg-general.pdf>

Figure 6: Primary Election Registration & Turnout, 1972-2014

(Source: Office of the California Secretary of State)

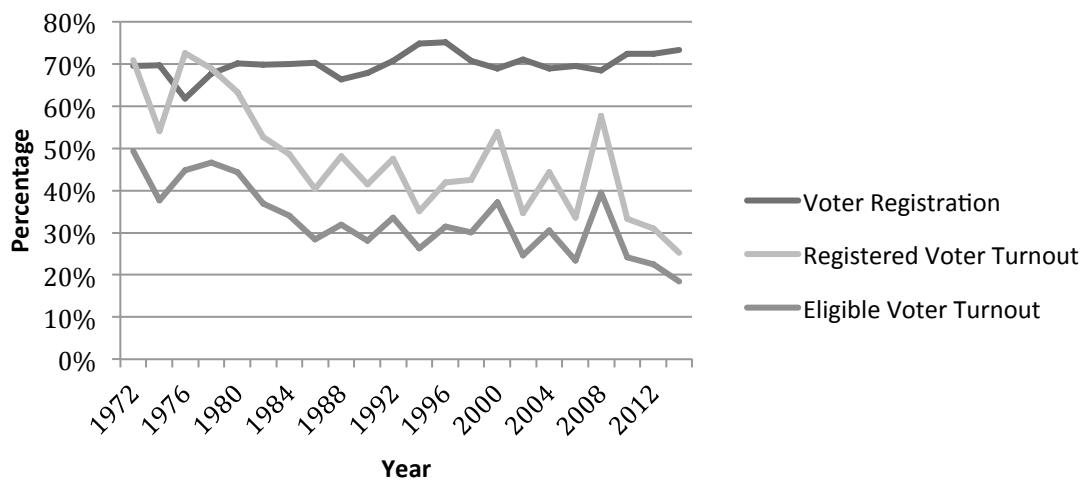
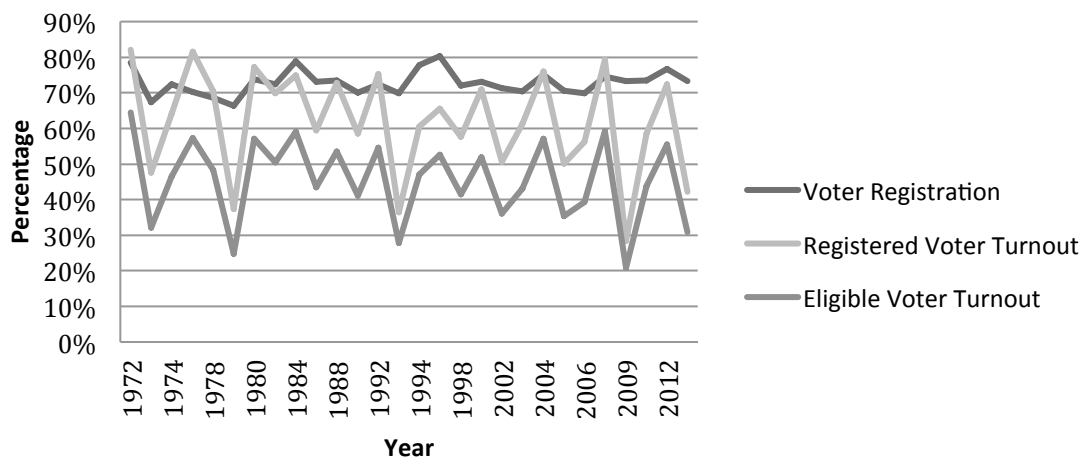


Figure 7: General Election Registration & Turnout, 1972-2014

(Source: Office of the California Secretary of State)



There are two unusual peaks in participation in Figure 6, in 2000 and 2008—well after the general trend of decline had begun. In the case of 2000, both the Democratic and Republican Presidential primaries were competitive in a year that lacked a sitting President, ensuring higher turnout. The year 2008 was also a highly competitive primary season (especially on the Democratic side), and turnout was further increased by the California primary taking place on February 5—much earlier than it had in years past. This early date was an important factor

because, in many cases, presidential primary campaigns are decided early in the year, ensuring that primaries taking place later on—potentially after a candidate has effectively secured the nomination—could suffer from reduced public interest and turnout.

However, the 2008 date change was the only such change that did noticeably affect turnout. In 1996, 1998, 2000, 2002, and 2004, the California primary was moved from its usual June date to March.³³ But this change did nothing to reverse falling turnout, with the exception of the 2000 election cycle.

Where general elections are concerned, another date dynamic is at work in some of the more notable characteristics of Figure 7. In this case, the different date dynamic expands upon the established statistical fact of lower participation during midterm election years by going a step further—odd year special elections. The voter turnout and registration figures from the 2014 election cycle, while very low, were not the lowest figures California had seen up to that point.

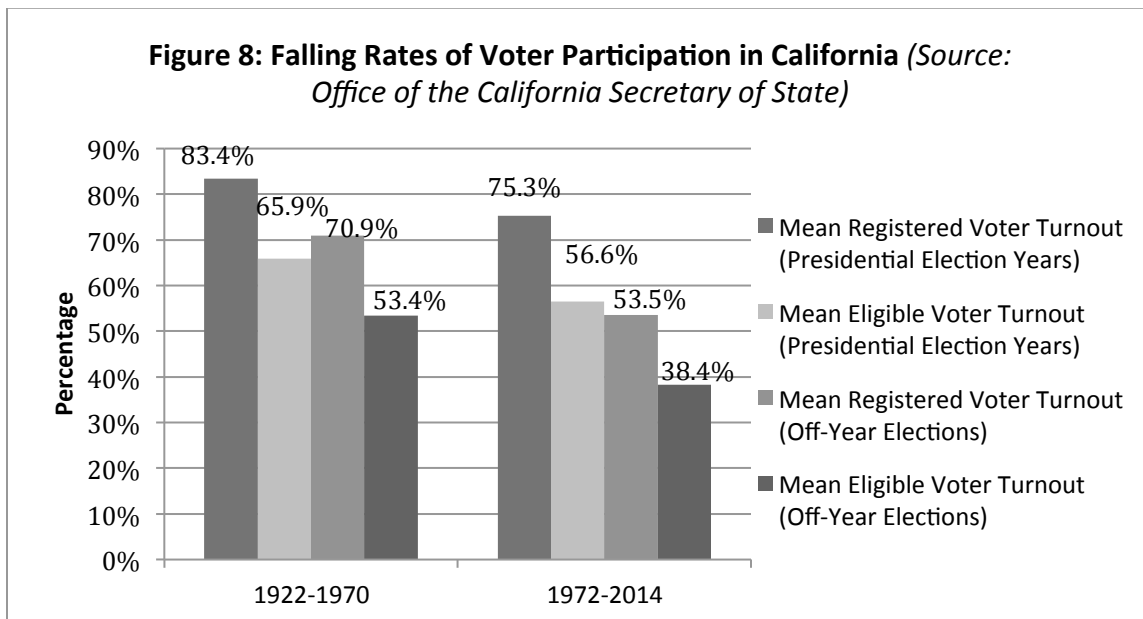
The years 1973, 1979, 1993, 2003, 2005, and 2009 all saw special elections take place in California. Each of these election cycles - except for the 2003 recall election - produced extremely low rates of both eligible and registered voter turnout. The low point came in the 2009 special election, where just 28.4% of registered voters and 20.8% of eligible voters participated.³⁴

Despite the major changes that have taken place between the two eras, in addition to voter registration rates, one other statistic—and one other trend—has remained constant between the 1922 and 2014. Voter participation tends to peak with the last election in a cycle—meaning the November general election. The statistic is the differential between eligible voter turnout and registered voter turnout. Although ongoing trends have appeared to grow more exaggerated over time due to falling voter participation rates, the gulf between eligible voter

³³ California Secretary of State Alex Padilla, “Historical Voter Registration and Participation in Statewide Primary Elections 1914-2014,” *Voter Registration Statistics – California Secretary of State*, accessed July 17, 2015, <http://elections.cdn.sos.ca.gov/sov/2014-primary/pdf/04-historical-voter-reg-primary.pdf>

³⁴ California Secretary of State Alex Padilla, “Historical Voter Registration and Participation in Statewide Elections 1900-2014,” *Voter Registration Statistics – California Secretary of State*, accessed February 20, 2015, <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/04-historical-voter-reg-general.pdf>

turnout and registered voter turnout has not changed significantly in either presidential or midterm election cycles, as can be seen below in Figure 8, which compares mean statistics between the two eras.

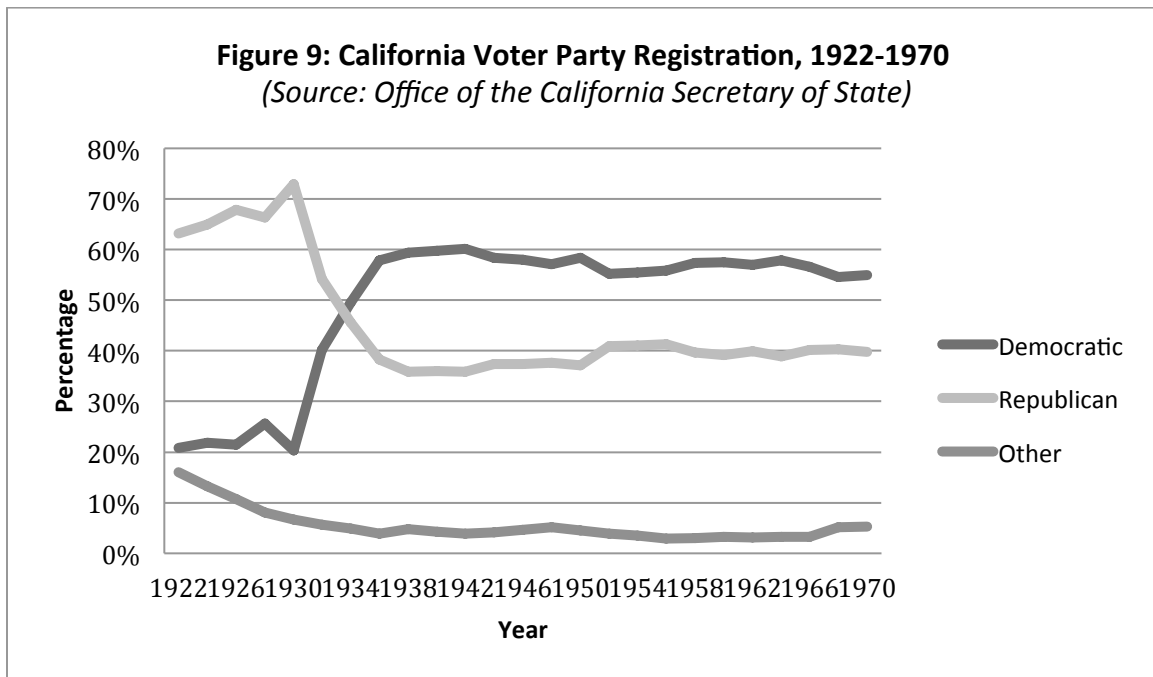


The data clearly indicate that the low voter turnout rates of 2014 are not a momentary aberration or entirely the product of systemic cyclical elections. Instead, the low voter turnout rates in California are part of an ongoing trend. The falling turnout trend is poised to grow even more pronounced over time, given the similarly long-running, ongoing trends concerning partisan affiliation and demography in the state.

Partisanship, Ideology, and Voter Turnout: The Past, Present, and Future

As a group, Figures 4-8 presented the same subplots in a larger story of declining political participation: 1) Voter turnout fell over time. 2) The declines that accompanied off-year elections grew more pronounced with time. 3) Voter participation in primary elections dropped sharply. 4) The turnout patterns of primary elections came to mimic those seen in general elections. 5) All of these developments happened despite voter registration rates remaining roughly the same.

However, the history of partisanship in California features two different subplots. When taken together and coupled with present ideological preferences, turnout tendencies, and electoral results, these subplots suggest voter turnout rates will not recover if left unaddressed. The first of these two stories, from 1922 to 1970, can be seen on Figure 9.



As can be seen above, the Republican Party started the period with a massive advantage in voter registration over the Democratic Party. Independents and third-party voters (labeled as “Other”) fell into single digits by 1928, and would not break into double digits again for the duration of this time period.³⁵ However, the onset of the Great Depression granted considerable political momentum and credibility to leftist ideology—a reality underlined by the popularity of the End Poverty in California (EPIC) program promoted by the Socialist-turned-Democrat author Upton Sinclair, who nearly won the governorship of California in 1934.

Unsurprisingly, the Great Depression also severely damaged the reputation of the Republican Party in the state. This set in motion the major story of that era—a massive partisan

³⁵ Ibid.

realignment in voter registration. From 1930 to 1932, the Democratic Party jumped from 20.3% to 40.2%, a figure that would rise to 49.6% by 1934 and, ultimately, an outright majority of 57.8% by 1936.³⁶ Over the same time frame, the Republicans fell from 73.0% to 54.2%, then to 45.6%, and ultimately to 38.3% by 1936.³⁷ From that point on, this new status quo effectively froze, with Democrats holding an outright majority of registered voters, hovering around 55%, while Republicans encompassed roughly 40% of registered voters.

Nevertheless, even with this realignment, it would be a mistake to believe that California became a “blue” state or even a liberal one during this time. Despite the dramatic change in partisan affiliation, there was no corresponding change in ideology. After Republicans carried California in both the 1924 and 1928 presidential election cycles, Democrats went on to carry the state in 1932, 1936, 1940, 1944, 1948, and 1964. For their part, Republicans did manage to carry the state in 1952, 1956, 1960, and 1968.

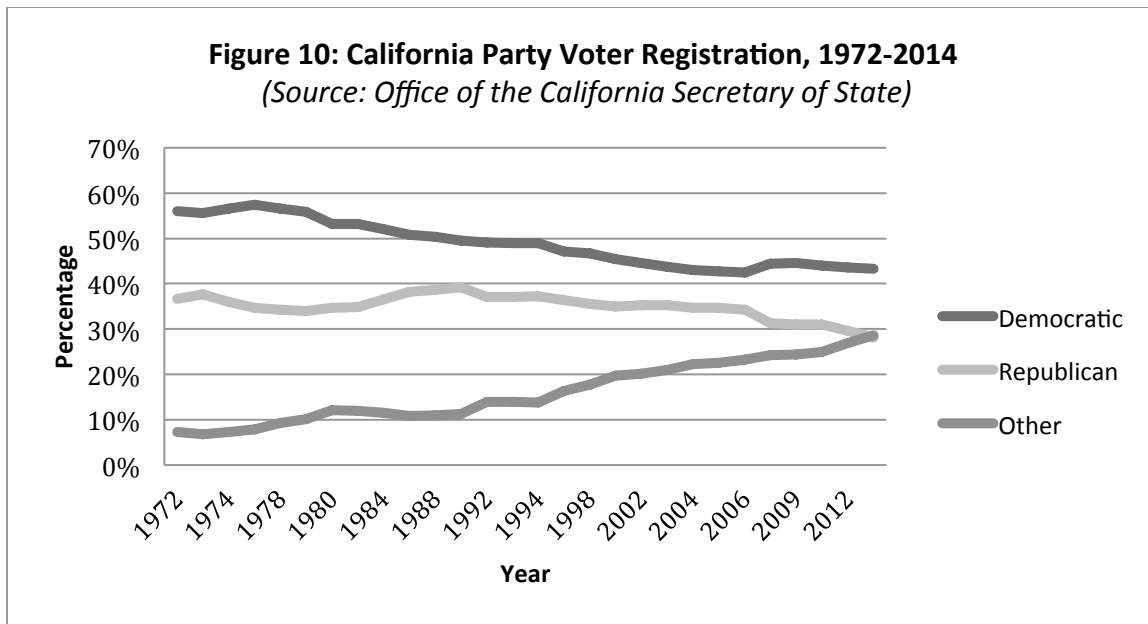
Moreover, even with a massive disadvantage in voter registration, Republicans continued to fare well in statewide elections. For example, during this time period, California had only two Democratic Governors—Culbert Olson from 1939 to 1943, and later Pat Brown from 1959 to 1967. Every other year saw Republicans control the governorship, and until the 1958 election cycle—when the Democrats captured majorities in both the State Assembly and the State Senate in addition to the governorship—Democrats had not held a majority in the State Assembly since 1942. In addition, the Democrats had not enjoyed a majority in the State Senate since 1890.³⁸

From those facts alone, it is clear that the change in voter registration was more indicative of dissatisfaction with an existing party rather than any kind of deep-seated ideological shift. This reality is only further underlined by the changes that have taken place in partisan affiliation since 1972. Those changes are shown in Figure 10.

³⁶Ibid.

³⁷Ibid.

³⁸Kevin Starr, *Golden Dreams: California in an Age of Abundance, 1950-1963* (New York: Oxford University Press, 2009), p. 216.



Since 1972, independent and third party voters have steadily increased in number, while the numbers of both registered Democrats and registered Republicans in the electorate have continuously declined. As discussed earlier, at the present time, the number of “Other” voters (decline to state voters and third party voters) has narrowly surpassed the number of Republicans in the state. Given that this trend has been ongoing for more than 40 years—and counting—it is fair to speculate that “Other” voters will, with time, grow to encompass an even larger share of registered voters in California.

However, even though the partisan makeup of the state has changed, electorally, California remains an imperfect reflection of both the ideology and partisanship of its voters, much as it was in the preceding era. For instance, even though Democratic voter registration has declined substantially, the state has solidified a reputation as a “blue” state in recent years. Although California voted Republican in six straight presidential elections—1972, 1976, 1980, 1984, and 1988—California went on to vote Democratic in the next six presidential elections in 1992, 1996, 2000, 2004, 2008, and 2012.

In addition, Republicans continued to enjoy success at the statewide level until Jerry Brown’s second iteration. The period from 1972 through 2014 included the tail end of the second Ronald Reagan term as governor, eight years of George Deukmejian, eight years of Pete

Wilson, and seven years of Arnold Schwarzenegger. These Republican terms together comprised 25 of the 42 years since 1972, although that trend appears poised to change in the future.

Democrat Jerry Brown—reelected in 2014 to a second term of his second spell as governor—enjoys broad Democratic majorities in both the assembly and the senate. In addition, the difficulties Republican Arnold Schwarzenegger faced as governor only highlighted the growing divide between the more moderate ideology that had once served Republicans well electorally, and the more conservative direction of the statewide party as a whole. As mentioned earlier, the disconnect between ideological voter preferences and the policies enacted by the parties themselves in the state is one of the factors that has contributed to the apathy often cited as a major factor in the low voter turnout rates of the present day. Conservative Republican voters in 2014 had no statewide constitutional officials to represent them.

In short, the disparity between ideology and partisan preferences are a recurring theme and problem throughout the history of the state. Figures 9 and 10 indicate that the problem of low voter turnout is very likely to worsen with time. Independent voters already constitute a smaller percentage of likely voters than their percentage of registered voters. In addition, registered independent voters are increasing in number.

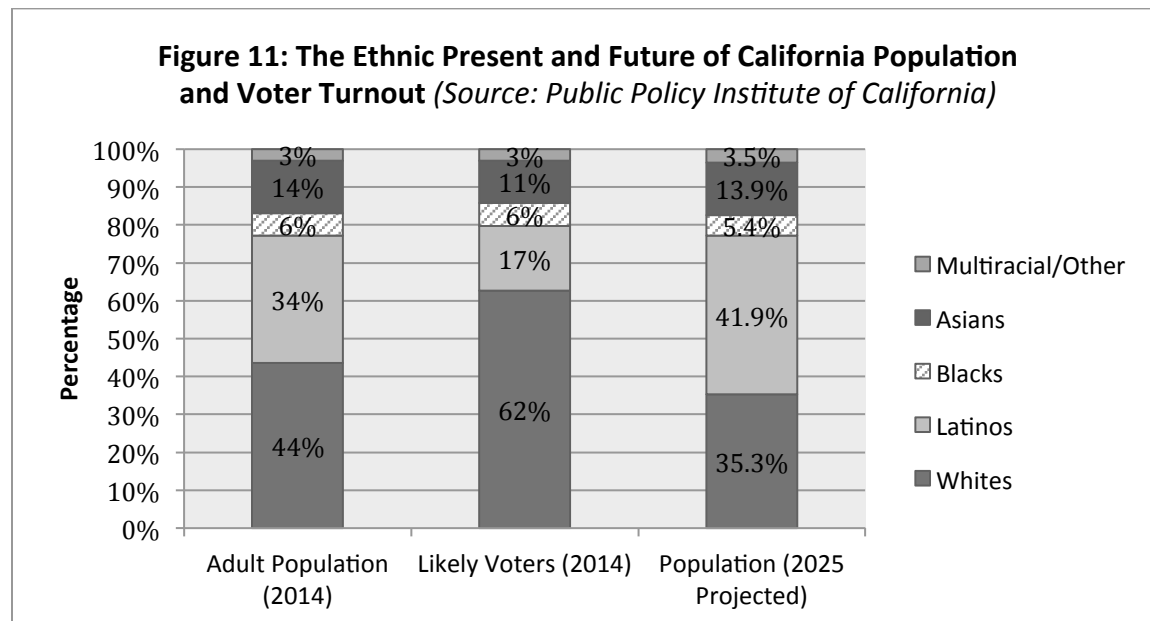
Voter Turnout and Socioeconomic Characteristics

The same demographic characteristics underlying the low voter turnout rates of the present are also projected to grow even more pronounced in the future. If the state continues to grow in population at its currently projected rate, the demographic disparities visible in voter turnout rates discussed earlier will tend to widen. They will also have an even stronger negative effect on voter registration and turnout figures.

As of 2013, California had a population that was reportedly 38.8% white, 38.4% Latino, 13.8% Asian, and 5.7% black, with the remaining 3.3% split between multiracial individuals and American Indians.³⁹ By 2025, these figures are expected to change to 35.3% white, 41.9%

³⁹Hans Johnson and Laura Hill, “California’s Future: Population—February 2015,” *Public Policy Institute of*

Latino, 13.9% Asian, 5.4% black, and 3.5% multiracial or American Indian.⁴⁰ Moreover, Latinos at the present time account for 60% of all eligible, unregistered voters.⁴¹ When compared to the present-day breakdowns of likely voters, the implication is that the worsening voter turnout rates will lead to an even more distorted, disproportionate electorate in the future, as Figure 11 demonstrates.



Elderly voters already comprise a disproportionate share of the likely voters in California. Moving forward, this phenomenon will become even more pronounced, as the elderly population in the state is itself on the rise. While people over the age of 65 comprise 13% of the population as of 2015, by 2025, they are expected to account for 17% of the population in the state.⁴²

Finally, the data indicating that likely voters tend to be both of higher income and better educated than their unlikely voter counterparts are also problematic as far as promoting higher

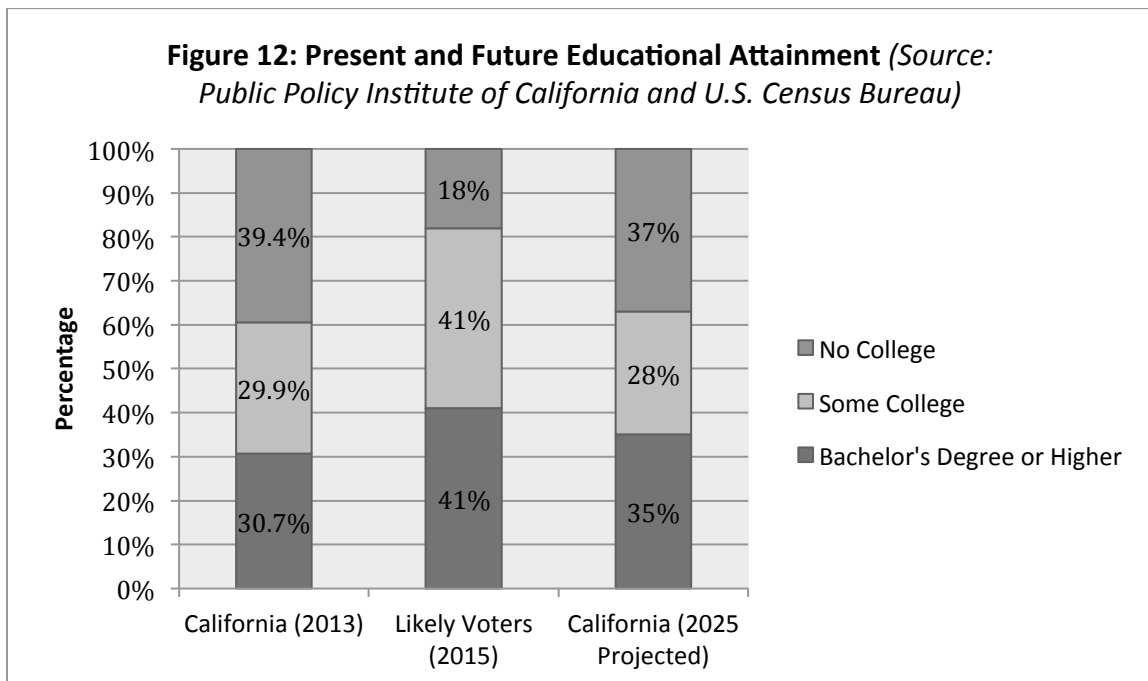
California, accessed February 24, 2015, http://www.ppic.org/content/pubs/report/R_215HJ3R.pdf

⁴⁰ Ibid.

⁴¹ Mark Baldessare, Dean Bonner, and Jui Shrestha, "Just The Facts: California's Likely Voters, August 2014," *Public Policy Institute of California*, accessed February 21, 2015, http://www.ppic.org/content/pubs/jtf/JTF_LikelyVotersJTF.pdf

⁴² Hans Johnson and Laura Hill, "California's Future: Population—February 2015," *Public Policy Institute of California*, accessed February 24, 2015, http://www.ppic.org/content/pubs/report/R_215HJ3R.pdf

voter turnout is concerned. These characteristics do not appear to be trending in a way that would translate to higher rates of voter turnout in the future. The state is not on course to become significantly better off in terms of median household income; the gains seem to be going to the top. Homeownership rates have been falling for years and are not expected to rise in the near future.⁴³ Even though the state economy is increasingly dependent on a highly educated workforce, only 35% of working age adults are expected to have a bachelor's degree and only 28% are expected to have any form of postsecondary education by 2025.⁴⁴ When compared to the current general population and likely voter breakdown shown on Figure 12, the gap between the likely voter and the general public looks some distance away from being closed.



⁴³Hans Johnson and Marisol Cuellar Mejia, "California's Future: Housing—February 2015," *Public Policy Institute of California*, accessed February 22, 2015, http://www.ppic.org/content/pubs/report/R_215HJ2R.pdf

⁴⁴Hans Johnson et al, "California's Future: Higher Education—February 2015," *Public Policy Institute of California*, accessed February 25, 2015, http://www.ppic.org/content/pubs/report/R_215HJR.pdf

A Looming Issue

The preceding data have demonstrated that low voter turnout rates, if not addressed by remedial policy action, will become the new status quo in elections going forward. Indeed, turnout could drop if current demographic predictions come to fruition. When coupled with the partisan and ideological issues in the state, the prospects of reversing the larger trend of falling voter turnout do not look favorable. While partisan, ideological, economic, and demographic trends cannot be easily changed, there are some policy changes that could mitigate low turnout.

The Local Situation: Future Potential Solutions to the Troubled Present

The final section of this chapter consists of two brief analyses, of a county and a city. I have chosen Los Angeles County and the City of San Francisco as the two case study local jurisdictions. The former jurisdiction has drawn considerable attention for its extremely low voter turnout. The latter jurisdiction, meanwhile, has been characterized by high participation rates, even in the context of declining voter turnout at the statewide level. However, both jurisdictions have proposed—or implemented—systemic solutions to address the problem of low voter turnout going forward.

Los Angeles County and the City of San Francisco

Policy innovations aside, Los Angeles County and the City of San Francisco were chosen because in two important ways, they are opposites of each other. In addition to the stark differences in turnout, the two jurisdictions differ in demography. Los Angeles represents a troubling vision of the future. San Francisco, on the other hand, represents relatively high rates of political participation, but also a socioeconomic profile that never was the norm—and likely never will be the norm—on the statewide level.

In the most recent election cycle in 2014, Los Angeles County recorded a registered voter turnout rate of 31.0%—the lowest in the entire state in the past election cycle—and an eligible voter turnout rate of 24.9%, trailing only Imperial, San Bernardino, and Tulare Counties on that

measure.⁴⁵ The City of Los Angeles shares a recent history of noticeably low rate of voter turnout with the County. In its most recent mayoral election, in 2013, only 23.3% of registered voters in the City actually voted.⁴⁶

Moreover, LA County and the City of LA both effectively mirror the voter turnout trends visible on the statewide level. With regard to LA County, its 2012 registered and eligible voter turnout rates were much higher than its 2014 figures at 68.0% and 54.2%⁴⁷, respectively. These figures replicate the regular spikes in voter turnout that occur during presidential election years. Regarding the City of LA, the extremely low voter turnout rates during its odd-year municipal elections effectively mimics the dramatic plunges in voter turnout that have more recently begun to transpire on the statewide level during its odd-year special elections.

However, as indicated earlier, these conditions do not hold true within the confines of San Francisco. On the last general election date—November 4, 2014—San Francisco posted a registered voter turnout rate of 53.0%.⁴⁸ Nevertheless, the City of San Francisco still exhibits the same tendencies seen in both Los Angeles County and on the statewide level with regard to voter turnout during odd year, unusually dated, or late-dated primary elections. In the two preceding election dates—one on June 3, 2014, and the other on November 5, 2013—the City of San Francisco posted registered voter turnout rates of just 29.7% and 29.3%, respectively.⁴⁹

Los Angeles County was also chosen because, even at the present time, its population has a very similar profile to the projected statewide population a decade from now—and possibly

⁴⁵ California Secretary of State Alex Padilla, “Voter Participation Statistics By County, 2014 General Election,” *Voter Registration Statistics – California Secretary of State*, accessed February 26, 2015, <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/03-voter-participation-stats-by-county.pdf>

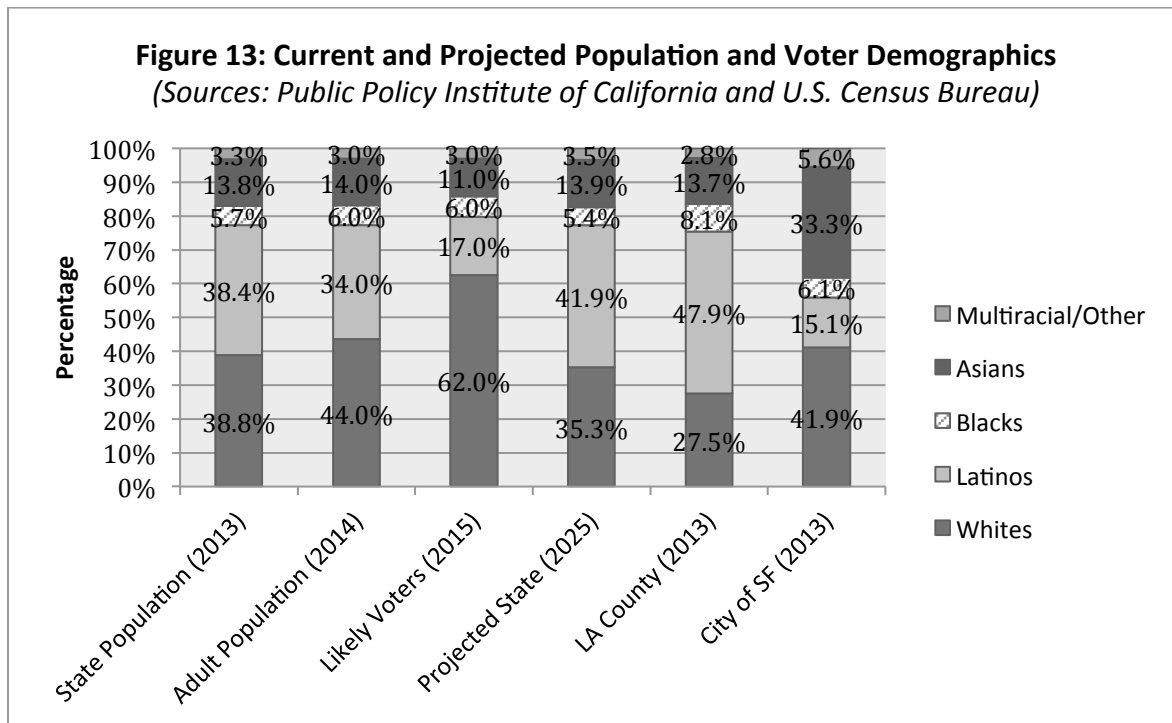
⁴⁶ City of Los Angeles, “General Municipal and Special Elections – Official Election Results – May 21, 2013,” *City of Los Angeles –Certified Final Bulletin*, accessed February 27, 2015, http://ens.lacity.org/clk/elections/clkelections329089176_07302014.pdf

⁴⁷ California Secretary of State Alex Padilla, “Voter Participation Statistics By County, 2012 General Election,” *Voter Registration Statistics – California Secretary of State*, accessed February 27, 2015, <http://elections.cdn.sos.ca.gov/sov/2012-general/03-voter-participation-stats-by-county.pdf>

⁴⁸ City and County of San Francisco, “San Francisco SFGov—Historical Voter Turnout,” *City and County of San Francisco Department of Elections*, accessed August 20, 2015, <http://www.sfgov2.org/index.aspx?page=1670>

⁴⁹ Ibid.

further beyond that. From a demographic, educational, economic, and political standpoint, Los Angeles County makes a worthy subject for comparison with the present and projected future of the entire state.⁵⁰ For contrasting reasons, the City of San Francisco also presents a useful case study. Figures 13-15 show visual comparisons of the relevant data; note that in Figures 13-15, “LA” is used for Los Angeles County, while “SF” is used for the City of San Francisco.



⁵⁰California Secretary of State Alex Padilla, “Voter Registration Statistics By County – Report of Registration as of October 20, 2014,” *Voter Registration Statistics – California Secretary of State*, accessed February 26, 2015, <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/02-voter-reg-stats-by-county.pdf>

Figure 14: Current and Projected Education in California (Sources: Public Policy Institute of California and U.S. Census Bureau)

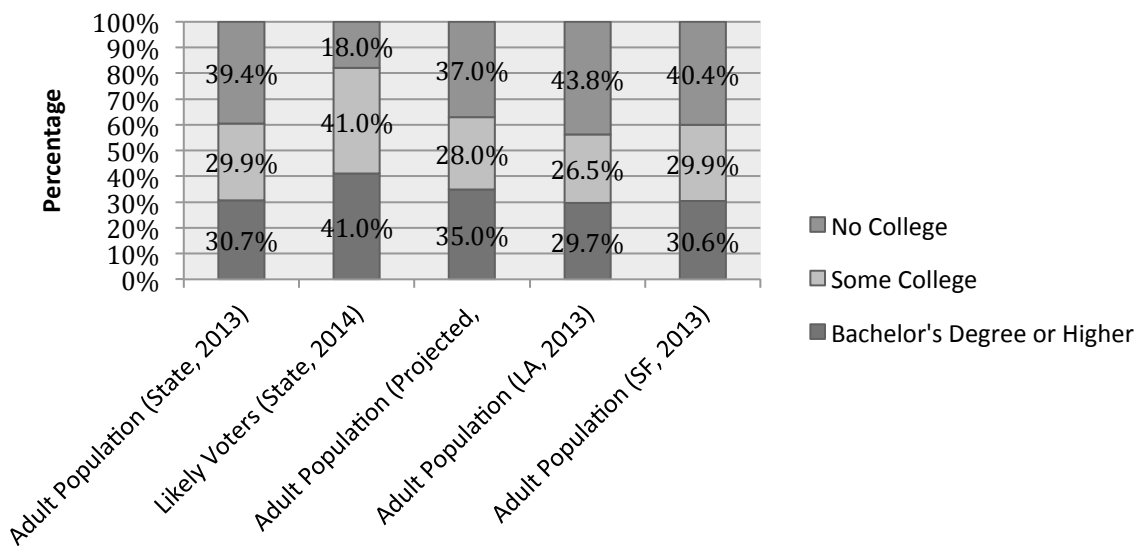
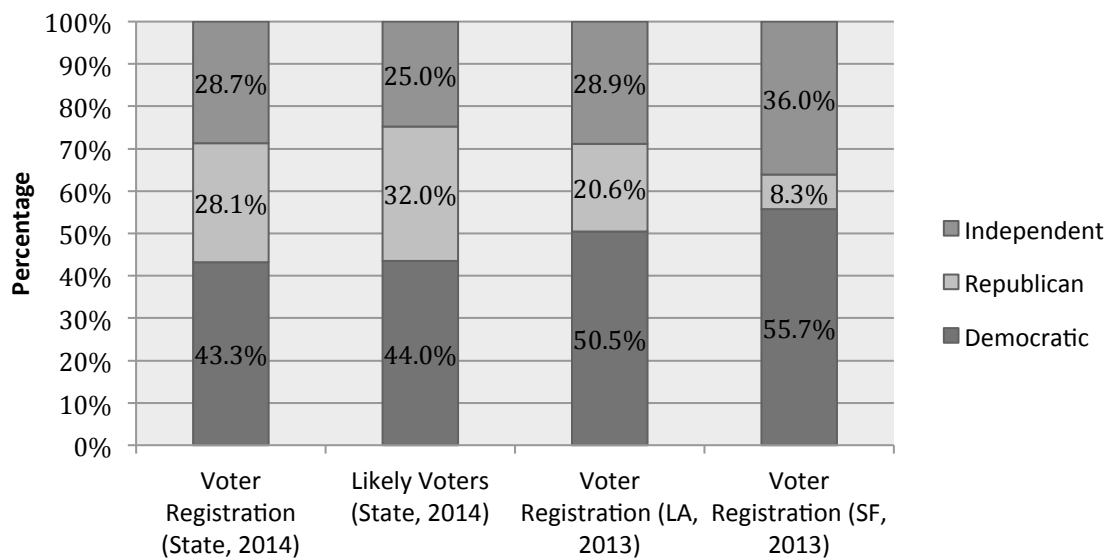


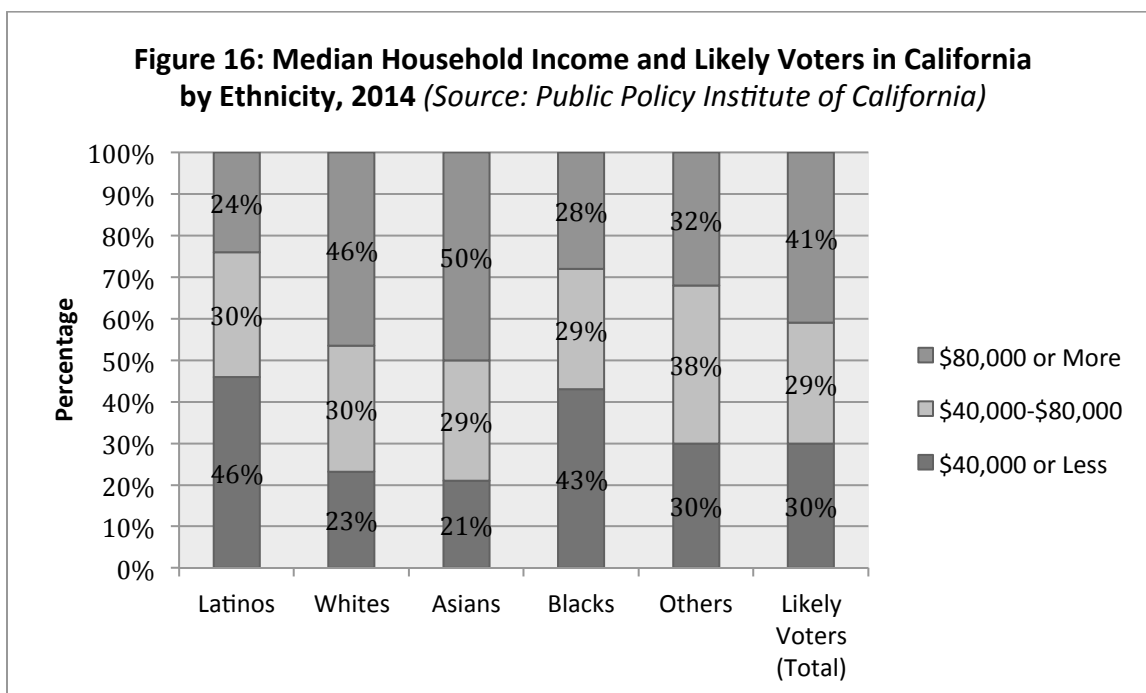
Figure 15: Comparison of Partisan Preference (Source: Office of the California Secretary of State, Public Policy Institute of California)



From these comparisons, two statistical trends are apparent. First, as mentioned earlier, the demographic data in Los Angeles County is very close to future projections for the state a decade from now. Second, although San Francisco is a less ethnically diverse, better-educated, and a more heavily Democratic jurisdiction than Los Angeles, there is still a futuristic skew in its

data—the extremely high percentage of registered voters unaffiliated with either major party. However, the futuristic skew in San Francisco has not resulted in lower voter participation. Meanwhile, the futuristic skew in Los Angeles County—a very high Latino population—appears to be an underlying factor in the low voter participation there.

At the present time, four in ten of all Latino likely voters in the state live in Los Angeles County, and 59% of Latino likely voters identify as Democrats.⁵¹ Latinos as a group are known not just for their disproportionately small presence in the electorate discussed earlier, but also for being closely associated with the other factors associated with low voter turnout rate: income, education, and age.⁵² These data are displayed below in Figures 16-18.



⁵¹Mark Baldessare, Dean Bonner, and Jui Shrestha, “Just The Facts: Latino Likely Voters in California— August 2014,” *Public Policy Institute of California*, accessed February 28, 2015, http://www.ppic.org/content/pubs/jtf/JTF_LatinoVotersJTF.pdf

⁵²Ibid.

Figure 17: Education and Likely California Voters by Ethnicity, 2014

(Source: Public Policy Institute of California)

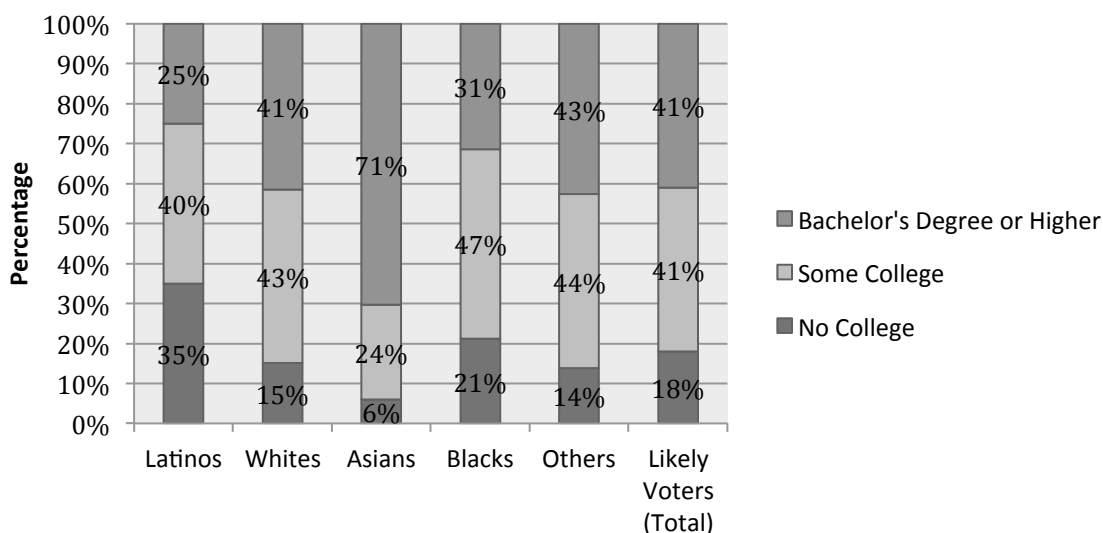
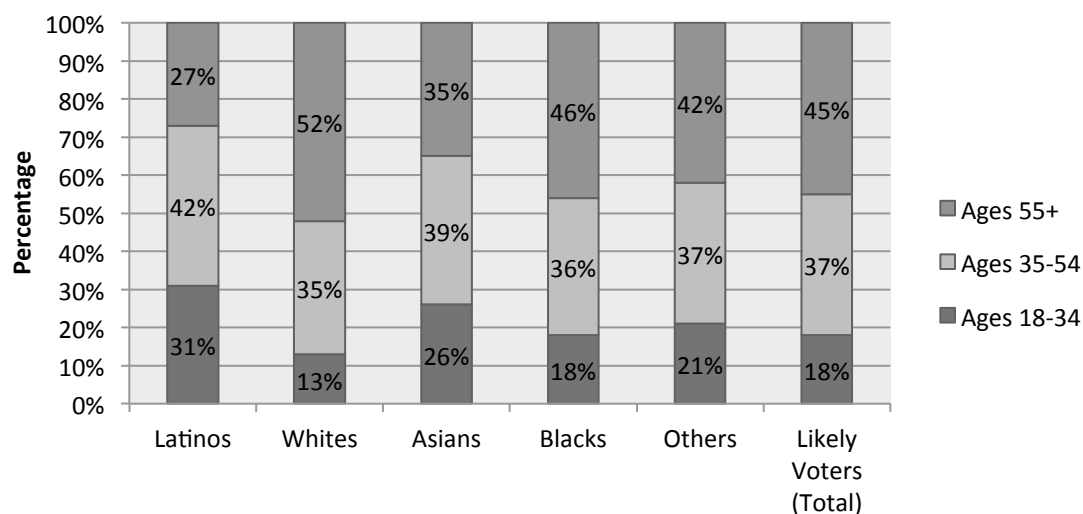


Figure 18: Age and Likely California Voters by Ethnicity, 2014

(Source: Public Policy Institute of California)



As the Latino population increases, its underrepresentation in the electorate will likely persist, barring potential mitigation through potential variables such as political realignments or the assimilation and gentrification of this population in subsequent generations. The likely voter in California tends to be white, well educated, older, and economically prosperous. This profile is

not what the future of California's population is projected to be. Los Angeles County thus offers a glimpse into the future of California, barring significant changes in demographic and economic factors.

Although the *median* household income of the Los Angeles County slightly outstrips that of the state as a whole (\$62,237 versus \$57,500), this figure is well below the *mean* household income of the County (\$89,466), which implies an economy skewed by a small number of high incomes.⁵³ This kind of skewing is also visible in the whiter, better-educated, more gentrified confines of San Francisco, where, as of 2013, the median household income was estimated at \$75,604 and the mean income was estimated at \$110,208.⁵⁴ An economy defined by highly unequal incomes is a reality even in the present day on the statewide level.

Los Angeles County and San Francisco were ideal choices for a closer look due to both present realities and future projections. Moreover, both jurisdictions seem to be well aware of the problems presented by low voter turnout rates, and this is the final reason that Los Angeles County and the City of San Francisco were used in this chapter. Both jurisdictions either currently are addressing, or have already moved to address, the problems presented by low voter turnout with remedial policy action.

The Status Quo and Recent Developments

At this writing, five different policy remedies for low voter turnout could possibly see use on a wider scale in California. Three of the policies discussed below emerged from Los Angeles County (or from one of its sub-jurisdictions). The other two policies developed in San Francisco, with one already implemented and the other gaining momentum for implementation there.

The City of Los Angeles had historically held its municipal elections in odd-numbered years. As mentioned earlier, the City reported extremely low rates of voter turnout in these election

⁵³ U.S. Bureau of the Census, "Los Angeles County QuickLinks," accessed February 28, 2015, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml>

⁵⁴ U.S. Bureau of the Census, "San Francisco County QuickLinks," accessed August 24, 2015, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml>

cycles. It thus mirrored both the recent statewide phenomenon of low voter turnout during odd-year special elections, and the ongoing trend of off-year (midterm election year) drops in voter turnout. This problem was further exacerbated by the fact that municipal elections in the City of Los Angeles took place in May, rather than the customary Election Day month of November.

However, in March 2015, the passage of Charter Amendment 1 and Charter Amendment 2 in Los Angeles changed that election calendar going forward. Municipal elections and school board elections were moved to even years on the same November dates used during federal election cycles.⁵⁵ It remains to be seen what—if any—increases in voter turnout this policy will bring about in Los Angeles, but the logic underlying this policy appears sound. Moreover, lawmakers appear to agree with the notion that election consolidation would improve voter turnout; the California State Assembly recently approved a measure that would require consolidated elections in all cities in the state with less than 25% voter turnout in the last four statewide general election cycles.⁵⁶

Los Angeles County, meanwhile, is currently flirting with two other policy solutions to the problem of low voter turnout rates. The first solution targets a different systemic aspect of the issue—the gulf between eligible voters and registered voters. At a 2015 joint legislative hearing in Los Angeles, a proposal to implement automatic voter registration was raised.⁵⁷ Such a proposal would emulate the “motor voter” bill that was recently signed into law in Oregon, which automatically registers voters using their driver’s license records.

What impact automatic voter registration will have on voter turnout in Oregon remains to be seen. It is possible that such a bill would only register a subset of voters unlikely to vote

⁵⁵ Jean Merl, “Backers of election charter amendments declare victory,” *Los Angeles Times*, March 3, 2015, accessed March 3, 2015, <http://www.latimes.com/local/lanow/la-me-ln-charter-amendments-declare-victory-20150303-story.html>

⁵⁶ Patrick McGreevey, “California Assembly oks measure to boost turnout in city elections,” *Los Angeles Times*, July 16, 2015, accessed August 27, 2015, <http://www.latimes.com/local/political/la-me-pc-lawmakers-approve-measure-to-boost-voter-turnout-in-cities-20150716-story.html>

⁵⁷ Abby Sewell, “Officials seek ways to boost L.A. County’s voter turnout,” *Los Angeles Times*, February 20, 2015, accessed March 1, 2015, <http://www.latimes.com/local/cityhall/la-me-voter-turnout-20150221-story.html>

anyway. Still, optimism that this policy will increase turnout clearly exists; it would not have been proposed in California otherwise.

Although all democracies have some costs of voting—such as time and effort spent to become informed about the upcoming election, and the time and effort spent to go to the polls—the United States is somewhat notable among western democracies for imposing additional costs on voters. These additional costs are the time and effort associated with the separate process of registering to vote and, in the case of some states, money needed to pay for documentation to comply with voter identification laws. Automatic voter registration lowers the “costs” of voting by eliminating the registration process for voters, the second policy under consideration in Los Angeles County—one that was recently tested on a small scale—moves against the “costs” of voting in a different way.

This policy innovation is intended to change the cost-benefit equation of voting for citizens by introducing the possibility of a financial reward from voting by entering those who voted into a lottery. A \$25,000 lottery prize was offered in a Los Angeles School Board election. Despite the sample size concerns presented by looking at a small jurisdiction over the past four election cycles, the early results of the policy are promising. Over the past four years, turnout has increased by 6,000 votes, or 1%.⁵⁸ Moreover, these small results were achieved with just 16.4% of the population aware of the lottery, a quarter of which reported the lottery made them more likely to vote.⁵⁹

It was also found that the turnout-improving influence of the lottery reward was more pronounced among Latinos and low-income persons than others.⁶⁰ Thus, this policy could be very effective at increasing turnout on the statewide level given the demographic and economic direction of California as a whole. However, the lottery reward would need to be well publicized to have an optimal effect.

⁵⁸Howard Blume, “Voter in L.A. school board race wins \$25,000 for casting a ballot,” *Los Angeles Times*, July 17, 2015, accessed August 29, 2015, <http://www.latimes.com/local/lanow/la-me-ln-laUSD-election-winner-20150717-story.html>

⁵⁹Ibid.

⁶⁰Ibid.

As mentioned earlier, San Francisco has managed to report significantly higher voter turnout than Los Angeles, even in the midst of the statewide decline in voter participation. Although it is tempting to credit the gap between Los Angeles and San Francisco to the starkly different demographic and economic profile of the latter jurisdiction, doing so would ignore a key characteristic of San Francisco that should have hurt voter turnout: its high percentage of third-party voters who, as a group, are less likely to vote than registered Democrats or registered Republicans. Therefore, differences between the structural election policies of the two jurisdictions – Los Angeles versus San Francisco – should be examined.

San Francisco notably differs from Los Angeles in election format. This difference is, in essence, another form of election consolidation—Ranked Choice Voting, or RCV. As a result, it effectively eliminates the primary election phase from the calendar. This policy allows for greater degree of ideological variation among candidates. Thus, there is a greater chance that voters will be able to vote for someone closer to their ideological preferences. It also reduces costs to voters by eliminating an election phase that already suffers from lower turnout, thus combating the “election fatigue” phenomenon.

RCV was enacted in 2002 by charter amendment and took effect in 2004, but it is only used for municipal offices at the present time.⁶¹ Since its implementation, registered voter turnout in even-year November general elections has never fallen below 50%, though below 50% turnouts did happen a few times prior to the implementation of RCV.⁶² Municipal elections are already noted for exhibiting low voter turnout; thus, the implication of RCV is that its potential effect would be greater if its use were expanded to county, statewide, and federal offices.

Finally, an ongoing trend in voter behavior in San Francisco may yet precipitate the implementation of another policy that has long been linked to improved voter turnout. California is one of the few states to allow both no-excuse absentee voting and permanent absentee voter status. Voters can cast their ballots by mail in all election cycles if they choose

⁶¹City and County of San Francisco, “San Francisco SFGov—Historical Voter Turnout,” *City and County of San Francisco Department of Elections*, accessed August 20, 2015, <http://www.sfgov2.org/index.aspx?page=1670>

⁶²City and County of San Francisco, “San Francisco SFGov—Ranked Choice Voting,” *City and County of San Francisco Department of Elections*, accessed August 30, 2015, <http://www.sfgov2.org/index.aspx?page=876>

to do so. These policies are widely viewed as measures that make the voting process easier and more convenient for voters by having ballots mailed directly to the place of residence of the voter well in advance of Election Day. Voters can become informed about the issues at stake, settle on issue positions at their leisure, and eventually make voting decisions all in the privacy of their own home. These policies have seen increasing use in San Francisco over time—in every election cycle since May 2009, the percentage of voters casting their ballots by mail has exceeded 50%.⁶³

The increasingly widespread usage of these vote-by-mail options has not gone unnoticed by local governments. Multiple jurisdictions in northern California—including San Francisco—are considering a change in election format to All-Vote-By-Mail (VBM) elections.⁶⁴ This policy would enable jurisdictions to keep their administrative costs under control by saving money that would otherwise be spent on staff, equipment, and renting polling places.

Moreover, several county officials touted the All-VBM election format as one that helped promote voter turnout.⁶⁵ The positive commentary and statistical signs in California have thus mirrored the assessments of All-VBM elections following the implementation of the policy in other jurisdictions around the U.S. such as Oregon, Washington, Colorado, and Salt Lake City, Utah.⁶⁶

Conclusions

Low voter turnout rates in California are a product of many different factors endemic to both the population and the political system. Past voter registration and turnout data indicate that voter turnout rates have trended downward for years. At the same time, although the partisan

⁶³ City and County of San Francisco, “San Francisco SFGov—Historical Voter Turnout,” *City and County of San Francisco Department of Elections*, accessed August 20, 2015, <http://www.sfgov2.org/index.aspx?page=1670>

⁶⁴ John Wildermuth, “Voting by mail taking over from polling places in the state,” *San Francisco Chronicle*, July 3, 2015, accessed August 30, 2015, <http://www.sfchronicle.com/politics/article/Voting-by-mail-taking-over-from-polling-places-in-6365494.php>

⁶⁵ Ibid.

⁶⁶ Ben Winslow, “Big voter turnout in ‘Vote by Mail’ election, county clerk says,” *Fox 13 Salt Lake City*, August 13, 2015, accessed August 31, 2015, <http://fox13now.com/2015/08/13/big-voter-turnout-in-vote-by-mail-election-county-clerk-says/>

affiliations of California voters have undergone a dramatic realignment, the changes in partisan affiliations have not corresponded well either to the ideological preferences of the voters or the electoral results delivered by the state. In addition, the current statistical profile of the population in California reveals significant demographic differences on a range of measures between the eligible voters and the likely voters of the state. Finally, the projections of the future population in California imply that this gulf will only widen if policy changes are not implemented.

Remedial action is being attempted. However, it should be noted that these reforms are not the only potential solutions to the problem, and that the policies discussed above may not be the most effective changes to the electoral structures of the United States where promoting voter turnout is concerned. Such hypothetical policies as creating systems of proportional representation or implementing mandatory voting laws (with a corresponding financial and legal penalty structure for not voting), to name two, might increase turnout, but their implementation is highly unlikely.

There are, however, politically feasible ways to improve voter turnout. They include Election Day registration (which has already been implemented in California), automatic voter registration, election consolidations, and the various voting-by-mail reforms. Similarly, the lottery reward option changes the perceived costs to voting by introducing a positive financial incentive to vote.

Voters in California (and the U.S.) have always viewed presidential elections as more important, meriting greater voter turnout, and voters will likely hold this sentiment forever. The current electoral system and partisan entities ensure an imperfect reflection of voter ideology. That discrepancy is certain to cause continued disappointment and turnout-depressing apathy when voters find that their ideological preferences do not necessarily translate into desired policies.

Partly because of that aforementioned discrepancy, although the costs of voting are obvious and tangible to many voters, the costs of *not* exercising the right of suffrage are much less apparent to many citizens in the voting-eligible population. Directly moving against this

problem would likely be the most effective way to combat the trend of falling political participation. However, the policy actions that could accomplish that feat are, as indicated earlier, unlikely given the structural and political contexts of the United States. Nonetheless, in California at least, political leaders appear to be doing what they can to reduce the costs of voting—and at this point in time, these policies together represent the best, most feasible hope at stopping or reversing the long-running decline in political participation in the state.

CHAPTER 4

Health Insurance and Demographics of California Immigrants Eligible for Deferred Action

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In November 2014, President Obama announced the expansion of the Deferred Action for Childhood Arrivals (DACA) program and the creation of a new program, Deferred Action for Parents of U.S. Citizens and Lawful Permanent Residents (DAPA). More than one million undocumented immigrants in California became potentially eligible for work authorization and relief from deportation under these executive actions. As of this writing, a court decision has blocked implementation of the President's actions while an appeal to that decision is being considered.

This chapter discusses the health insurance status, Medi-Cal eligibility, and demographics of California immigrants eligible for the original and the expanded DACA programs and for DAPA.¹ These immigrants are not eligible for health insurance options under the Affordable Care Act ("Obamacare"). But Californians who are granted DACA or DAPA become eligible for comprehensive Medi-Cal coverage under state policy if otherwise eligible based on income. California recently approved an expansion of comprehensive Medi-Cal to all undocumented children age 18 and under, to be implemented as soon as May 2016.¹ Approximately 250,000 undocumented California children are projected to be eligible for Medi-Cal under that expansion, according to previous research.²

Using the latest Current Population Survey (CPS) data,³ we estimate that:

- Up to 54% of Californian adults eligible for DACA or DAPA lacked private health insurance and had income below the Medi-Cal eligibility threshold in 2013.
- We estimate that between 310,000 and 440,000 Californian adults with DACA or DAPA could be eligible for Medi-Cal several years after implementation of both executive actions. This estimate is contingent on sign-up rates for DACA and DAPA, which are highly uncertain.
- Most of these adults (80%) are DAPA-eligible, while the others are already eligible for the original DACA program or would become eligible for expanded DACA after the 2014 executive action is implemented.

- Not all Californians who are granted DACA or DAPA and are eligible for Medi-Cal would be anticipated to enroll in health coverage.
- Approximately two-thirds (66%) of DACA- and DAPA-eligible adults were working in 2013.
- More than nine out of ten (91%) Californian adults eligible for DACA or DAPA were under age 45 in 2013.

Background

The DACA program, which began in 2012 and was expanded in 2014, offers deportation relief and work authorization to undocumented immigrants who arrived in the U.S. before the age of 16 and have continuously resided since 2010.⁴ They must currently attend school, have a high school diploma or General Equivalency Diploma (GED), or have an honorable discharge from the U.S. military. In November 2014, the DAPA program was announced for parents of citizens and lawful permanent residents who have resided in the U.S. for at least 5 years, and meet other requirements. Individuals convicted of certain criminal offenses, including felonies and some misdemeanors, are not eligible for DACA or DAPA.⁵

Nearly 200,000 Californians, or 66% of those estimated to be eligible, have already had initial DACA applications approved under the original program, and initial and renewal applications continue to be filed.⁶ However, the application processes for the expanded DACA and the new DAPA programs have been placed on hold because a court order has blocked implementation. Immigration policy experts predict that the block is temporary and that the new programs will ultimately be implemented.⁷ However, the timeline for implementation is uncertain.

Approximately half (50% to 52%) of California's undocumented immigrants could be eligible for relief from deportation and work authorization under the 2012 and 2014 executive actions, according to three different estimates by national and California-based researchers. Estimates of the total number of Californians eligible for DACA and DAPA range from 1.25 million by Pew Hispanic Center, to 1.52 million by the Migration Policy Institute, to 1.56 million by Manuel Pastor at the University of Southern California.⁸ These estimates vary as a result of differences

in methodology and the inherent uncertainty in estimating the size of undocumented populations. More detail on the estimates is provided in the Appendix.

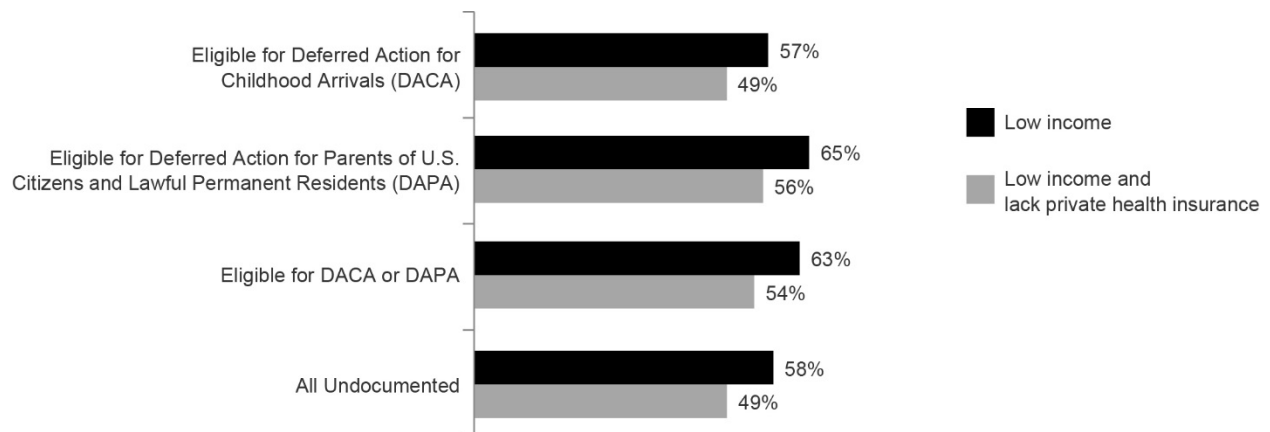
In this chapter, we use Pew Hispanic Center's estimate of 2.45 million undocumented residents in California, of which 1.25 million are estimated to be eligible for DACA or DAPA.⁹ These estimates are consistent with the authors' previous analysis of a proposal to expand Medi-Cal to low-income undocumented Californians.¹⁰ Among Californians eligible under the executive actions, we estimate that 72% are eligible for DAPA and the remainder are eligible for DACA, which is in line with other researchers' estimates.¹¹

Majority of Adults Eligible for DACA or DAPA are Low Income and Lack Private Health Insurance

Using data from the CPS, we examine the health insurance status and income of Californian adults eligible for the original and expanded DACA programs and DAPA, and then compare to the California undocumented population overall. Methodological details and more details on health insurance status and income by age and eligibility category are included in the Appendix.

More than half (57%) of California adults eligible for DACA and 65% of those eligible for DAPA were low income by Medi-Cal income eligibility standards in 2013. Approximately 58% of all undocumented adults had income below the Medi-Cal standards. In this chapter, we focus on individuals lacking private health insurance, since they are the most likely to enroll in Medi-Cal once eligible. Up to 49% of California adults eligible for DACA and up to 56% of those eligible for DAPA were low-income, lacked health insurance, and are predicted be eligible for Medi-Cal under state policy if granted relief.¹² Comparatively, 49% of undocumented California adults are low income and lack private health insurance (Exhibit 1).

Exhibit 1: Income and Health Insurance Status of Undocumented California Adults and Those Eligible for Deferred Action, Ages 19-64, 2013



Source: UCLA/UCB estimates using Current Population Survey, 2013

Notes: Low income is defined using the Medi-Cal income eligibility thresholds. Under state policy, the Medi-Cal income eligibility threshold for adults is below 139% FPL, or approximately \$16,360 for a single individual in 2015. Private health insurance includes job-based coverage and insurance provided through the individual market.

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The Medi-Cal eligibility estimates in this chapter are upper limits for a number of reasons:

- Income levels could increase for those granted work authorization through DACA or DAPA, reducing Medi-Cal eligibility. We estimate that approximately two-thirds of California adults eligible for DACA (65%) and DAPA (66%) were working in 2013.¹³ However, employment rates could increase with work authorization. A national survey of youth granted DACA found that nearly 60% obtained a new job and 45% increased earnings since receiving DACA.¹⁴ The Fiscal Policy Institute predicted that immigrants who receive work authorization under the executive actions would experience a 5 to 10% increase in wages, on average.¹⁵
- The estimates in this chapter are based on income reported prior to the increases in California's minimum wage in 2014 and 2016.¹⁶ Previous research found that the increase in the state minimum wage is likely to reduce Medi-Cal eligibility on a statewide basis.¹⁷
- Access to private health insurance could increase for undocumented Californians granted work authorization under DACA or DAPA, resulting in fewer individuals who would enroll in Medi-Cal under state policy. A national survey of youth granted DACA found that nearly 21% obtained health insurance since receiving DACA.¹⁸

- The health insurance and demographic estimates in this chapter are reflective of all California immigrants eligible for DACA and DAPA. To the extent that the \$465 application fee is a barrier to signing up for DACA or DAPA, those who apply for deferred action may have higher income, reducing the percentage eligible for Medi-Cal.

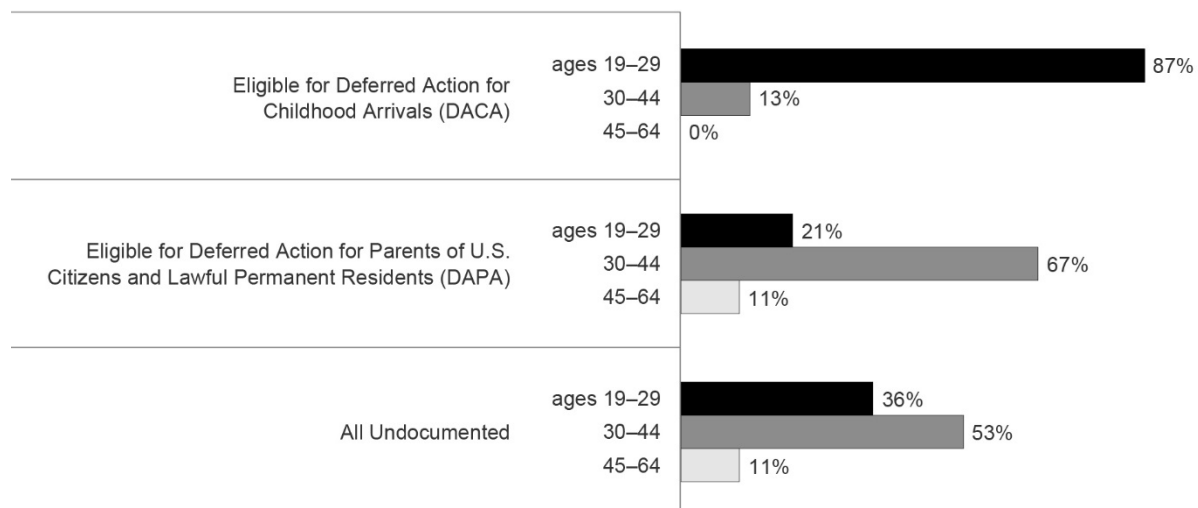
DACA- and DAPA-Eligible California Adults are Relatively Young

The vast majority (87%) of California adults eligible under the expanded criteria were ages 19 to 29, while two-thirds (67%) of DAPA-eligible parents were between the ages of 30 and 44. Among undocumented Californian adults overall, 36% were ages 19 to 29 and 53% were between the ages of 30 and 44 in 2013 (Exhibit 2).

A previous study by UCLA researchers found that 11% of undocumented California adults were over the age of 45 in 2009, compared to 41% of U.S.-born citizen adults, 53% of naturalized citizen adults, and 33% of documented immigrant adults.¹⁹ These data highlight potentially lower premiums for most DACA and DAPA eligible California adults. Age-adjusted health insurance premiums, on average, begin to increase more sharply starting at around age 45.²⁰

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Exhibit 2: Age of Undocumented California Adults and Those Eligible for Deferred Action, Ages 19-64, 2013



Source: UCLA/UCB estimates using Current Population Survey, 2013

Note: Number of DACA-eligible adults ages 45-64 is too small to report. Analysis of eligibility for DAPA focuses on parents ages 19-64.

Not All California Immigrants Eligible for DACA or DAPA will be Granted Relief

Not all Californians eligible under the executive actions will apply for DACA or DAPA, due to barriers such as inability to afford the \$465 application fee, not having all of the required paperwork, fears and legal concerns, and not knowing how to apply or needing assistance with the application process.²¹ To date, nearly 200,000, or 66% of Californians eligible for DACA, have applied for and been granted relief from the federal government.²² The 2015-2016 California state budget includes \$15 million in funding to support non-profit organizations in providing application assistance and outreach and education efforts for naturalization or DACA/DAPA sign-up.²³ Efforts such as these may increase application and approval rates.

The sign-up rates of Californians eligible for DACA and DAPA are highly uncertain. On the lower end, we estimate the number who would be Medi-Cal eligible if the combined DACA/DAPA sign-up rate among Californians ultimately reaches 50% of those eligible. This outcome might occur if parents face greater sign-up barriers than experienced by DACA-eligible Californians. On the higher end, we estimate the number who would be Medi-Cal eligible if the DACA/DAPA sign-up rate reaches 70%. This result might occur as a result of factors such as extensive application and fee assistance being made available, and/or parents being more inclined to apply for relief than DACA-eligible youth.

Among Immigrants Newly Eligible for Medi-Cal, Not All Will Enroll

Not all Californians newly eligible for Medi-Cal will enroll. National research suggests that some undocumented immigrants and their family members are less likely to enroll in public programs than their native-born counterparts due to fear of negative immigration enforcement action for themselves or their families, concern about ability to adjust immigration status in the future, and a general fear and mistrust of public programs.²⁴ In a previously published analysis, the authors estimated that 64% of low-income undocumented residents who lack private insurance would enroll in Medi-Cal by 2019 if eligibility was expanded to all low-income Californians regardless of immigration status.²⁵ However, a similar analysis has not been conducted that is specific to the Californians eligible for DACA and DAPA.

Approximately half of low-income undocumented Californians are already enrolled in restricted scope Medi-Cal,²⁶ which covers emergency and pregnancy-related services for undocumented residents under a long-standing federal policy. Californians who are already enrolled in restricted scope coverage and are granted DACA or DAPA would likely be enrolled in comprehensive Medi-Cal benefits upon their next annual redetermination date if they are still income-eligible. If Californians granted DACA or DAPA enroll in comprehensive Medi-Cal, the most costly emergency services are already covered. Previous research found that 60% of the cost of comprehensive Medi-Cal coverage per adult is already paid for by the federal and state government through restricted scope Medi-Cal.²⁷

Take-up could be lower than predicted if individuals granted DACA or DAPA have difficulty with the Medi-Cal enrollment process or face barriers due to lack of information about Medi-Cal eligibility or misinformation about the consequences of applying. Additionally, in order to enroll smoothly, DACA- and DAPA-eligible Californians will need written materials and application assistance that is appropriate to their education level and the spoken and written languages in which they are comfortable. We estimate that 31% of adults eligible for DAPA have completed high school or its equivalent, or achieved a higher level of education, which is significantly lower than the percentage of DACA-eligible California adults who have a high school diploma or greater (96%).²⁸

Past research suggests that at least one-third of DACA-eligible Californians could benefit from written materials and assistance in languages other than English.²⁹ Data are not yet available on the English fluency of California parents eligible for DAPA, but a previous study found that 83% of undocumented adult respondents in the 2009 California Health Interview Survey chose to participate in a non-English language, which is an indicator of potentially limited English fluency.³⁰

If Significant DACA and DAPA Sign-Up Occurs in California, Many Could be Medi-Cal Eligible

Between 310,000 and 440,000 California adults in need of health insurance could be eligible for comprehensive Medi-Cal if between 50% and 70% of Californians eligible for DACA or DAPA are granted deferred action.³¹ Future sign-up rates for DACA and DAPA are uncertain and could fall

outside this range. If approximately 64% of those eligible take-up comprehensive Medi-Cal over time, enrollment would increase by approximately 200,000 to 280,000 adults. Most of these adults (80%) are DAPA-eligible. Among the remainder, some may have already been approved for DACA and may be enrolled in comprehensive Medi-Cal, while others would become eligible for the expanded DACA program after the 2014 executive action is implemented.³² These estimates do not include the 250,000 undocumented children estimated to be eligible for comprehensive Medi-Cal under state policy as soon as May 2016.³³

It is not yet known when the expanded DACA and DAPA programs will be implemented. After applications for expanded DACA and DAPA ultimately become available, it will take time for individuals to receive relief and for sign-up to reach its peak level. Application submissions will likely phase-in over time as eligible individuals learn about the program, decide whether to apply, prepare their application, and save for the application fee, if needed.

Furthermore, the current average processing time for a DACA application is six months and the predicted DAPA application processing time is not yet known.³⁴ The timelines of applicants and U.S. Citizenship and Immigration Services likely contributed to it taking two years before California's DACA sign-up rate reached 60%.³⁵ After Californians are approved under the expanded DACA and DAPA programs, it will also likely take time for them to learn about their potential health insurance eligibility and apply for Medi-Cal.

Policy Implications

The findings indicate that between 310,000 and 440,000 Californian adults who currently lack health insurance could gain access to more comprehensive Medi-Cal services if they are granted deferred action under President Obama's recent executive actions. A fraction of these individuals already have DACA and may have enrolled in Medi-Cal. While low-income undocumented children in California will gain access to comprehensive Medi-Cal in 2016, low-income undocumented adults are only eligible for emergency and pregnancy related services through Medi-Cal and have limited access to important preventive and treatment services.

Providing comprehensive coverage will build upon availability of existing federal and state funds. Public health insurance programs have been shown to increase the use of preventive care and decrease avoidable stays in the hospital. Previous Medicaid expansions have also been associated with lower death rates, lower rates of depression, and overall general better health. As two-thirds of the adults who could be granted DACA and DAPA are workers, the state's eligibility policy will also contribute to a healthier California workforce. Providing comprehensive coverage to undocumented immigrants participating in these programs will pave the way for receipt of timely and effective preventive and routine care that would lead to improving population health overall and reducing the costly consequences of delaying care.

Appendix: Methodology

We used data from the 2011-2013 Current Population Surveys to improve reliability of estimates and weighted them to 2013 for most recent estimates.

The undocumented population in California was estimated using statistical modeling techniques.

The population eligible for DACA was identified from within the undocumented population based on the criteria for DACA, including: 1) arrival in the U.S. prior to 16 years of age; 2) at least a high school diploma or equivalency, or currently in school; and 3) at least five years of residence in the U.S. The population eligible for DAPA was identified from within the undocumented population based on the criteria for DAPA, including: 1) having a child who is a U.S. citizen or Lawful Permanent Resident; and 2) at least five years of residence in the U.S. When individuals were identified as eligible for both programs, they were categorized as DACA-eligible.

Individuals who have been honorably discharged from the U.S. military are also eligible for DACA, and individuals convicted of certain criminal offenses, including felonies and some misdemeanors, are not eligible for DACA or DAPA. These could not be identified in the data.

The size of the population identified using the CPS is shown in Exhibit A. The population size was compared to other available estimates. The proportion of undocumented residents who are eligible for deferred action was relatively similar between our (55%) and others' (50-52%) estimates, but the total size of the undocumented population identified in our analysis was lower than others' estimates. Therefore, we rely on Pew's estimates of population size in this chapter.

The data on health insurance and demographics from the CPS is reported in this chapter in percentages. We applied these percentages to Pew Hispanic Center's estimate of the population size to obtain population size for each demographic.

Exhibit A: Estimates of Number of Californians who are Undocumented or Eligible for Deferred Action

	Source			
	Authors' Estimates	Pew Hispanic Center ³⁶	Manuel Pastor, USC Center for the Study of Immigrant Integration ³⁷	Migration Policy Institute ³⁸
All undocumented	2,247,000	2,450,000	2,980,000	3,034,000
Original Deferred Action for Childhood Arrivals (DACA)	298,000	300,000	356,000	343,000
Expanded DACA	47,000	950,000	95,000	93,000
Deferred Action for Parents of U.S. Citizens and Lawful Permanent Residents (DAPA)	884,000		1,106,000	1,523,000
Total DACA or DAPA	1,229,000	1,250,000	1,557,000	1,572,000

Exhibit B: Health Insurance and Demographics of Undocumented California Immigrants and Those Eligible for Deferred Action, 2013

Category	DACA or DAPA Eligible	DAPA Eligible	DACA Eligible			Undocumented		
Age	Total (19-64)	Total (19-64)	Total	15-18	19-64	Total	15-18	19-64
Health Insurance Status and Income								
Low Income	63%	65%	68%	96%	57%	63%	95%	58%
Lack Private Health Insurance	78%	77%	83%	87%	81%	78%	87%	77%
Low Income and Lack Private Health Insurance	54%	56%	60%	86%	49%	53%	85%	49%
Work Status								
Working (Ages 19-64)	66%	66%			65%			71%
Education level								
Less than high school	55%	69%	30%	92%	4%	61%	92%	55%
High School	32%	23%	48%	7%	66%	25%	7%	29%
Some College	8%	4%	16%	0%	23%	7%	0%	8%
Bachelor's degree or more	5%	4%	5%	0%	7%	7%	0%	8%
Age								
0-18	0%	0%	30%	100%	0%	14%	100%	0%
19-29	35%	21%	61%	0%	87%	31%	0%	36%
30-44	56%	67%	9%	0%	13%	45%	0%	53%
45-64	9%	11%	0%	0%	*	10%	0%	11%

* Number too small to report

Source: UCLA/UCB estimates using Current Population Survey, 2013

Notes: Low income is defined using the Medi-Cal income eligibility thresholds. Under state policy, the Medi-Cal income eligibility threshold for children under age 19 is below 267% FPL, or approximately \$64,750 for a family of four in 2015. The threshold for adults is below 139% FPL, or approximately \$16,360 for a single individual in 2015. Private health insurance includes job-based coverage and insurance provided through the individual market.

¹California 2015-2016 State Budget. <http://www.dof.ca.gov/documents/FullBudgetSummary-2015.pdf>

²Medi-Cal is the California name for the federal-state Medicaid program.

³The Current Population Survey is a monthly program by the U.S. Bureau of the Census and U.S. Bureau of Labor Statistics. It is the same survey used to estimate the monthly unemployment rate.

⁴The original DACA program, established in 2012, required continuous residence in the country since June 15, 2007, and being under the age of 31 as of June 15, 2012. Under the 2014 announcement, the date used to determine continuous residence was changed to January 1, 2010, and the upper age limit was eliminated.

⁵Convictions of criminal offenses could not be identified in the data. Throughout this chapter, when we refer to individuals eligible for DACA or DAPA, we mean that they are potentially eligible based on the eligibility criteria we are able to analyze.

⁶This sign-up rate is based on Pew Hispanic Center's estimate that 300,000 Californians were eligible for DACA under the initial eligibility criteria. U.S. Citizenship and Immigration Services, Data Set: Deferred Action for Childhood Arrivals, June 2015 data. <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>. Pew Hispanic Center, Immigrants in Western States Most Likely to Benefit from Obama's Executive Action, November 21, 2014. <http://www.pewresearch.org/fact-tank/2014/11/21/immigrants-in-western-states-most-likely-to-benefit-from-obamas-executive-action/>

⁷National Immigration Law Center, Press Release: Court Decision Signals Delay, Not Defeat, May 26, 2015. <http://nilc.org/nr052615.html>

⁸Pew Hispanic Center, 2014. Migration Policy Institute, Profile of the Unauthorized Population: California, accessed September 4, 2015. <http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/CA>. Pastor M, The Kids Aren't Alright, but they Could Be: Estimating the Benefits of DAPA for Children in California, presented to the Southern California Association of Grantmakers on March 11, 2015.

⁹Pew Hispanic Center, 2014.

¹⁰Lucia L, Jacobs K, Graham-Squire D, Watson G, Roby DH, Pourat N, and Kominski GF (UC Berkeley Labor Center and UCLA Center for Health Policy Research), A Little Investment Goes a Long Way: Modest Cost to Expand Preventive and Routine Health Services to All Low-Income Californians, May 2014. http://laborcenter.berkeley.edu/pdf/2014/health_undocumented.pdf

¹¹Our estimate is based on analysis of CPS 2013. Of those eligible under the executive actions, Manuel Pastor and the Migration Policy Institute both estimate that 71% are eligible for DAPA. Pastor, 2015. Migration Policy Institute, 2015.

¹²Medi-Cal eligibility policy: California Code of Regulations Title 22 § 50301.

¹³UCLA/UCB estimates using CPS 2013

¹⁴Gonzales RG and Bautista-Chavez AM, Two Years and Counting: Assessing the Growing Power of DACA, American Immigration Council Special Report, June 2014. http://www.immigrationpolicy.org/sites/default/files/docs/two_years_and_counting_assessing_the_growing_power_of_daca_final.pdf

¹⁵Fiscal Policy Institute, President's Immigration Action Expected to Benefit Economy, November 21, 2014. <http://fiscalfpolicy.org/presidents-immigration-action-expected-to-benefit-economy>

¹⁶California's minimum wage increased from \$8.00 to \$9.00 on January 1, 2014 and will increase further to \$10.00 an hour effective January 1, 2016. The City Council of Los Angeles, where a significant number of undocumented residents live, approved increases in the minimum wage, growing to \$15 per hour by 2020.

¹⁷Allegretto SA, Reich M, and West R, Ten Dollars or Thirteen Dollars? Comparing the Effects of State Minimum Wage Increases in California, June 2014. <http://www.irle.berkeley.edu/cwed/briefs/2014-02.pdf>

¹⁸New health insurance may have included student health insurance, job-based coverage, or state-funded Medicaid offered in a limited number of states. Gonzales and Bautista-Chavez, June 2014.

¹⁹Wallace SP, Torres J, Sadegh-Nobari T, Pourat N, and Brown ER, UCLA Center for Health Policy Research, Undocumented Immigrants and Health Care Reform, August 31, 2012. <http://healthpolicy.ucla.edu/publications/Documents/PDF/undocumentedreport-aug2013.pdf>

²⁰This cost trend is reflected in the age rating curve applied to premiums for private health insurance through Marketplaces under the Affordable Care Act regulations.

²¹Researchers from Harvard University surveyed youth from across the U.S. who were eligible for DACA but did not apply. Four in ten (43%) indicated they could not afford the \$465 DACA application fee. Other barriers that prevented youth eligible for DACA from applying included: missing paperwork (22%), legal concerns (17%), fear of sending their personal information to the government (15%), and not knowing how to apply (10%). Gonzales and Bautista-Chavez, June 2014.

²²In California, more than 198,000 initial applications for DACA had been approved by June 2015. Pew Hispanic Center estimates that 300,000 Californians are eligible under the original DACA program. U.S. Citizenship and Immigration Services, Data Set: Deferred Action for Childhood Arrivals, June 2015 data, published August 28, 2015. <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>. Pew Hispanic Center, 2014.

²³California 2015-2016 State Budget. <http://www.dof.ca.gov/documents/FullBudgetSummary-2015.pdf>

²⁴Pereira KM, Crosnoe R, Fortuny K, Pedroza JM, Ulvestad K, Weiland C, Yoshikawa H, and Chaudry A (Urban Institute), Barriers to Immigrants' Access to Health and Human Services Programs, Prepared under contract with the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, May 2012. <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Barriers/rb.shtml>

²⁵Lucia et al., 2014.

²⁶Approximately 725,000 undocumented Californians were enrolled in restricted scope Medi-Cal in 2013 (DHCS). Approximately 1.5 million undocumented immigrants have income that is below the Medi-Cal eligibility threshold. DHCS, Population Distribution by Citizenship Status, January 2013. http://www.dhcs.ca.gov/dataandstats/statistics/Documents/3_63_Population_Distribution_Citizenship_Status.pdf. Lucia et al., 2014.

²⁷Lucia et al., 2014.

²⁸UCLA/UCB estimates using CPS 2013

²⁹The Migration Policy Institute estimated that 36% of Californians eligible for DACA were Limited English Proficient. Among Californians predicted to be eligible for DACA, 43% elected to be interviewed in a non-English language in the California Health Interview Survey in 2007-2009. Migration Policy Institute, Deferred Action for Childhood Arrivals (DACA) Profile: California. <http://www.migrationpolicy.org/content/deferred-action-childhood-arrivals-daca-profile-california>. Brindis CD, Hadler MW, Jacobs K, Lucia L, Pourat N, Raymond-Flesch M, Siemons R, and Talamantes E, Realizing the Dream for Californians Eligible for Deferred Action for Childhood Arrivals (DACA):

Demographics and Health Status, February 2014. <http://laborcenter.berkeley.edu/realizing-the-dream-for-californians-eligible-for-deferred-action-for-childhood-arrivals-daca-demographics-and-health-coverage/>

³⁰Pourat N, Wallace SP, Hadler MW, and Ponce N, Assessing Health Care Services Used by California's Undocumented Immigrant Population in 2010, *Health Affairs* 33(5), 2014, pages 840-847.

³¹We start with Pew Hispanic Center's estimate that 1.25 million Californians could be eligible for DACA or DAPA. Those Californians are then assigned to three groups based on our analysis of CPS 2013 data: 8% DACA-eligible teens ages 15-18, 20% DACA-eligible adults ages 19-64, and 72% DAPA-eligible adults ages 19-64. For each group, the share that is low income and lacks private coverage is applied (Appendix, Exhibit B). Then, Medi-Cal eligibility numbers are estimated under scenarios in which 50% and 70% of those eligible for DACA or DAPA apply for relief.

³²About 200,000 Californians have already been approved for DACA, but is not known how many of those Californians are adults. Nationally, approximately half of individuals who received DACA approval in August 2012 through September 2013 were age 20 or older, according to USCIS. Data is not available on the number of Californians with DACA who are enrolled in Medi-Cal. USCIS, [Characteristics of Individuals Requesting and Approved for Deferred Action for Childhood Arrivals](#) (DACA).

³³UC Berkeley-UCLA California Simulation of Insurance Markets model version 1.91 estimate for 2015.

³⁴U.S. Citizenship and Immigration Services, USCIS Processing Time Information for the California Service Center, August 31, 2015.

³⁵Applications for the original DACA program became available in August 2012. After approximately two years, 60% of eligible California youth had been approved, using Pew Hispanic Center's estimate that 300,000 Californians were eligible for DACA under the original eligibility criteria. USCIS, December 2014. Pew Hispanic Center, 2014.

³⁶Pew Hispanic Center, 2014.

³⁷Pastor, 2015. Note: These are the latest estimates as of March 2015. Pastor considers the undocumented population estimate to be a high-end estimate.

³⁸Migration Policy Institute, 2015.

CHAPTER 5

The Economic Outlook for California: Taking the Bad with the Good

Jordan G. Levine and Christopher Thornberg

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This chapter reflects information available as of early October 2015.

California's economy continued to put the Great Recession farther and farther in its rear-view mirror as the state moved into the fifth year of the economic expansion that began in 2010. There is much to be optimistic about with respect to the economic outlook for the Golden State. Virtually every economic indicator is showing strong signs of improvement as of this writing, and the generally improving economic conditions have begun to benefit Californians across the spectrum of industries and demographic groups.

The housing market, which was the source of many of the state's woes in the Great Recession and its aftermath, has become a source of economic growth once again. Consumers were out in force during 2015, and with the exception of gas stations, every major category of taxable sales improved steadily. This was particularly true in the case of automobiles. Consumer behavior not only provided a boost to state and local government coffers through increased sales taxes, but highlighted the underlying optimism of California residents. The fact that more residents are willing to make the financial commitment to longer-term durable goods such as new cars demonstrates that in addition to better *current* economic conditions, Californians are also encouraged by their *future* prospects as well.

Builders have gotten back to business as well, with more new permits being filed for both residential and nonresidential structures. Tourism continues to drive both job and economic growth. Hotels are more fully occupied than at any point since the Great Recession began and their rooms are being rented for higher daily rates, making it a great time to be in the hotel business in California.

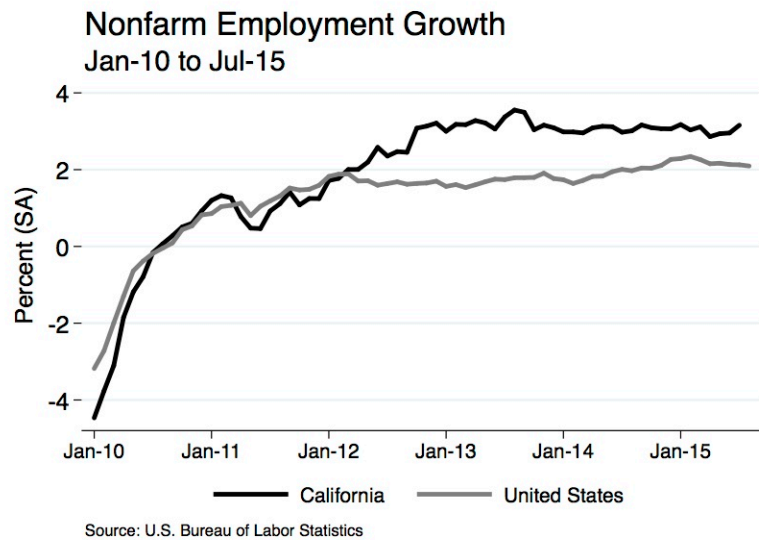
That is not to say that the state is without challenges, but rather that most of the underlying issues in California are of two over-arching flavors: longer-term/structural issues, such as the under-supply of housing, or our longer-term fiscal obligations; or external issues associated with difficulties abroad: a rising U.S. dollar relative to other currencies and the ongoing effects of technological change. Fortunately, with the state no longer in crisis-management mode, economic growth should help to provide the headroom needed to address these structural challenges to ensure that California remains a driver of nationwide growth for the foreseeable future.

Over the short term, Beacon Economics expects that the California economy will continue along on its upward trajectory. Specifically, employment growth is expected to remain above 2% per annum through 2018, despite the fact that the state has already recovered all of the jobs lost during the downturn. As incomes rise and the labor markets grow, consumers are forecast to remain drivers of economic growth. Home prices are also expected to maintain upward momentum, with robust growth through 2017, as retail owner-occupants form a larger share of the overall sales mix than in recent years, before beginning to cool off to more normal levels thereafter. California's economy performed exceptionally well in 2015, and, despite our challenges, the short-term outlook for the Golden State remains bright.

Top Positive Trends

California Still Outpacing the U.S. in 2015: While trouble plagued the international economy in 2015, domestic economic activity continues to move ahead robustly – and that was particularly true in California. Over the year, the Golden State was one of the brightest spots in the United States economy.

- August 2015 marked the 42nd consecutive month that California had outpaced the nation overall in terms of nonfarm job growth. Real state GDP increased by 2.8% in 2014 compared with 2.4% growth in the nation overall.
- With a 3.0% expansion through August 2015, California's labor market was growing half-again as fast as the nation's as a whole.
- Over the year, California was the 6th fastest growing state in the nation and the single largest source of new U.S. jobs, with 470,000 positions created as of August 2015.



Importantly, the state's current employment expansion is broad based in terms of both geographies and industries.

Quality of Jobs improving: Not only has California been generating a significant *quantity* of new jobs, but the *quality* of those jobs has been improving as well.

- Professional, Scientific, and Technical Services sector jobs have been the largest contributor to employment growth over the past year, accounting for 87,700 (18.7%) of the 470,000 nonfarm jobs created between August 2014 and August 2015.
- The Professional, Scientific, and Technical Services sector is one of the state's highest-paying sectors with an annual average wage of more than \$117,000 as of the end of 2014 (the most recent data available).
- 25,000 additional jobs were created in sectors that have an average annual wage in excess of \$100,000 per year. These include the Information (+14,900), Management of Companies (+6,000), and Finance/Insurance (+4,300) sectors.

California Employment Growth

Location/Industry	Jul-15 (000s)	Change (Y-o-Y) (000s)	(Percent)
San Jose	1,064.7	60.4	6.0
San Francisco (MD)	1,055.4	44.8	4.4
Inland Empire	1,336.0	46.9	3.6
San Diego	1,394.8	45.9	3.4
Orange County (MD)	1,545.1	50.0	3.3
Other Bay Area	516.2	14.1	2.8
Central Coast	524.7	14.0	2.7
North Central Valley	1,313.2	34.7	2.7
Los Angeles (MD)	4,326.0	101.3	2.4
South Central Valley	744.4	15.6	2.1
Oakland (MD)	1,089.3	22.7	2.1
Other Southern California	351.4	4.0	1.2
Bakersfield	257.1	1.1	0.4
California	16,149.0	494.2	3.2

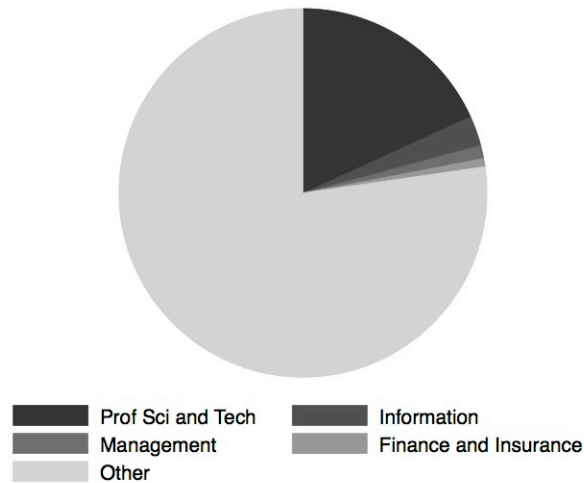
Prof Sci and Tech	1,276.4	89.9	7.6
Construction	720.9	48.9	7.3
Admin Support	1,083.5	61.0	6.0
Transport, Warehouse, Util.	545.4	24.8	4.8
Real Estate	277.7	10.8	4.0
Leisure and Hospitality	1,830.3	71.0	4.0
Wholesale Trade	737.5	23.6	3.3
Information	472.0	13.0	2.8
Education/Health	2,491.9	67.2	2.8
Management	230.7	5.8	2.6
Retail Trade	1,672.2	35.3	2.2
Other Services	550.2	8.5	1.6
Government	2,431.1	25.6	1.1
Finance and Insurance	522.4	3.6	0.7
Manufacturing	1,278.2	8.1	0.6
Farm	411.6	0.0	0.0
NR/Mining	29.0	-2.3	-7.3
Total Private	13,717.9	468.6	3.5
Total Nonfarm	16,149.0	494.2	3.2

Source: California Employment Development Department

- Together, these four high-wage sectors account for nearly one out of every four jobs created in California over the past year.

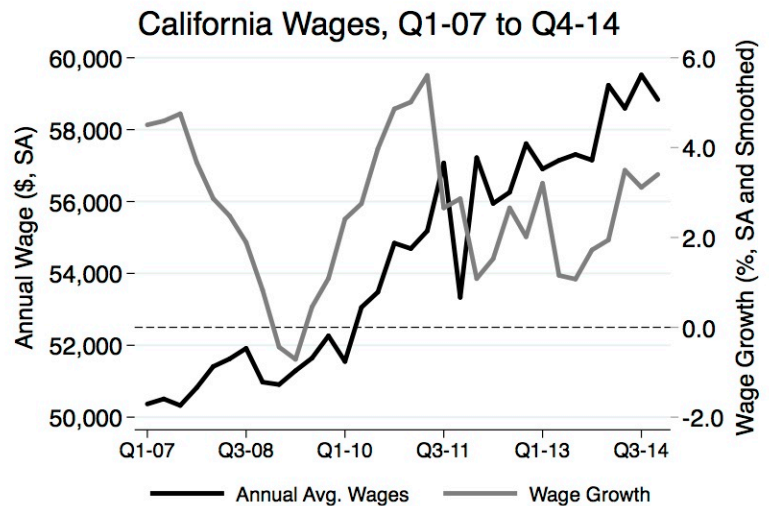
- The number of Californians who were working part time for 'economic' reasons (this means they would have preferred to be working full-time but couldn't find a position) fell by 112,000 through June 2015. At the same time, full-time employment had jumped by 470,000.

Job Growth by Industry, Jul-14 to Jul-15



Source: California Employment Development Department

- Up until recently, Beacon Economics has noted a distinct lack of wage growth despite the improving economy. Recently, economic growth has finally given way to a more broad-based improvement in wages. Though no doubt motivated by solid growth in high-wage sectors, the 2014 average annual wage for all workers was up 3.4% in California over the prior year. This is a faster rate of growth than in the nation as a whole, where there was a 3.1% increase in average wages.



Source: U.S. Bureau of Labor Statistics

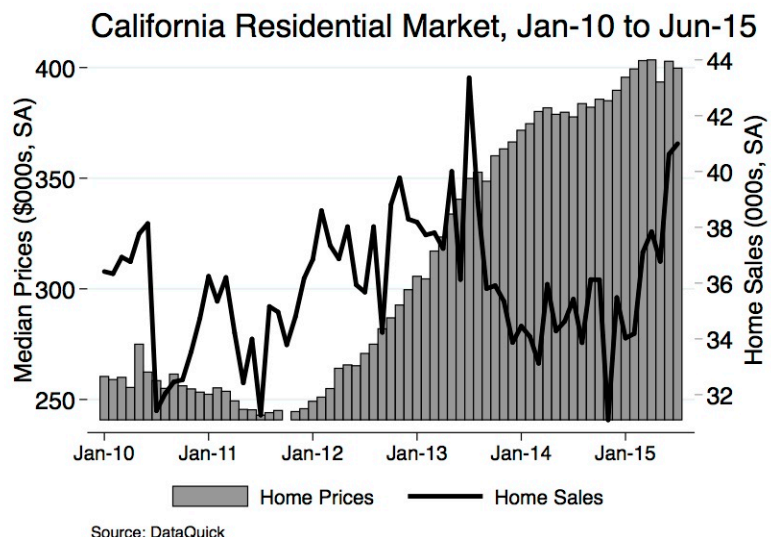
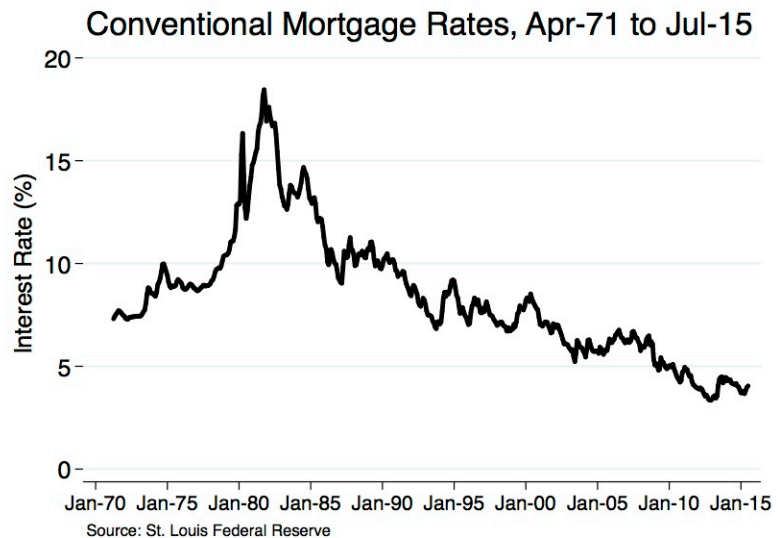
- Improved labor market outcomes have helped motivate previously discouraged Californians to resume their job searches, as evidenced by the labor force which expanded to its highest level on record, 19 million, in August 2015.
- Outside of mining (mainly petroleum), every nonfarm employment sector in California added jobs over the past year.
- While some parts of the state grew faster than others, every region added jobs during 2015.
- San Francisco and San Jose continued to lead the pack in terms of employment gains. Both averaged growth in excess of 4% in 2015.

- However, growth has not been limited to tech-heavy areas of the state. The Inland Empire has climbed to the number three spot for job growth, expanding its employment base by 3.6% through August 2015.
- The state's Farm sector, which has been plagued by drought in recent years, is also holding steady.

Home Sales Finally Started Coming Around: Last year, Beacon Economics highlighted weak home sales amidst a backdrop of rising home prices, new construction activity, and gradually improving labor markets. However, 2015 saw that trend change from one of disappointing sales to one where transactions are once again on the rise.

- Through the first half of 2015, sales of existing single-family homes had climbed 9.8% more than at the same point in 2014. As of this writing, nearly 170,000 homes have been sold in California.
- The median price of a home in the state has risen more than 82% since hitting bottom in early 2009—up to over \$400,000, from a low-point of \$221,000. This increase has helped existing homeowners rebuild their equity and resell their homes on the secondary market.
- Additionally, CoreLogic reports that at this writing fewer than 9% of all homes in California have a mortgage that is underwater (worth less

than the amount of principal balance outstanding). That low level compared to the previous crisis years should help provide more liquidity to the resale market in the coming years.



- Fueling growth in home sales was the fact that interest rates for a 30-year fixed rate mortgage loan were still hovering near historical lows. Federal Reserve data show that conventional mortgage rates dipped below 4% again even as the Fed Policy Committee contemplated raising its target interest rate.
- And, with the exception of the June 2012-June 2013 period, interest rates were lower than they have been at any point since the Fed began tracking mortgage rates in the early 1970s.
- With the economy healing and demand conditions improving, banks have also had a larger appetite for providing mortgage loans. Although much of the activity has been to finance the purchase of condominiums, mortgage lending at FDIC-insured banks increased by roughly 2.4% through the first quarter of 2015. This result follows several years of relatively lackluster lending activity in the face of more stringent federal regulations imposed on banks following the financial crisis. In part, the increased lending reflects better balance sheets as the New York Fed reported that mortgage delinquencies dipped below 2% in California at the end of 2014.
- As the economy continues to improve and homeowners continue to build equity, Beacon Economics forecasts that home sales will rise at a rate of between 7% and 10% in 2015 and 2016 before cooling to levels that are more in line with historical norms in 2017 and beyond (3% to 5%).

Top Negative Developments

Structural Labor Market Issues: Over the five years ending 2015, California's economy has made great strides in recovering from the recession. The growth and improvement, however, has not been evenly distributed across all segments of the economy. While California has created a significant number of new high-wage positions in high-skilled sectors and lower wage positions in lower skilled sectors (Tourism and Administrative Support), middle-income industries either remain well below their pre-recession levels or have yet to exhibit any significant growth since the downturn ended.

- Construction jobs have surged since the end of the recession with the sector adding nearly 155,000 positions across the state since 2009. Construction, however, was also one of the hardest-hit sectors during the Great Recession, shedding over 330,000 positions. As a result, there were at this writing still roughly 180,000 former construction workers who were either currently unemployed or who had changed industries.
- Manufacturing has also been disappointing during the expansion. In the rest of the United States, manufacturing sector jobs at this writing

California Employment by Industry
Pre-Recession Peak vs. Current

Industry	Jul-07 (000s)	Jul-15 (000s)	Diff.
Education/Health	1,919.6	2,491.9	572.3
Leisure/Hospitality	1,562.6	1,830.3	267.7
Prof Sci and Tech	1,062.9	1,276.4	213.5
Admin Support	999.7	1,083.5	83.8
Other Services	514.2	550.2	36.0
Logistics	511.7	545.4	33.7
Farm	383.8	411.6	27.8
Management	208.8	230.7	21.9
Wholesale Trade	717.3	737.5	20.2
NR/Mining	26.7	29.0	2.3
Information	474.5	472.0	-2.5
Real Estate	284.2	277.7	-6.5
Retail Trade	1,691.6	1,672.2	-19.4
Government	2,498.0	2,431.1	-66.9
Finance/Insurance	614.2	522.4	-91.8
Construction	899.4	720.9	-178.5
Manufacturing	1,468.8	1,278.2	-190.6
Total Private	12,956.3	13,717.9	761.6
Total Nonfarm	15,454.3	16,149.0	694.7

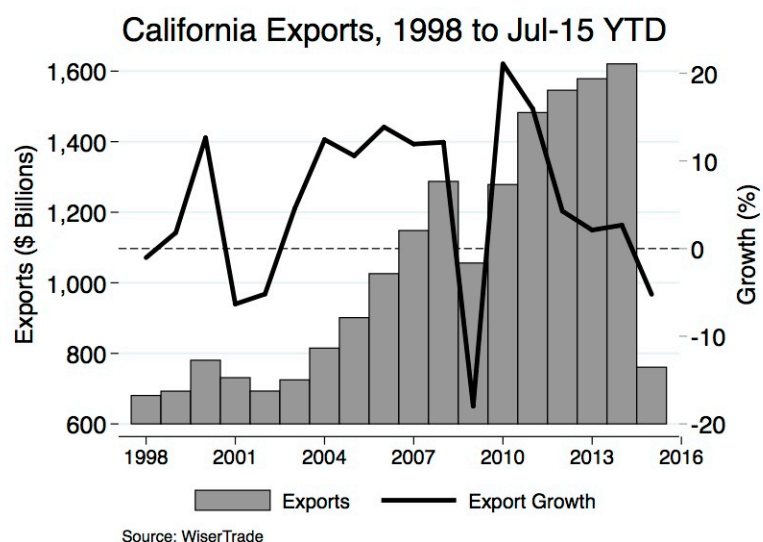
Source: California Employment Development Department

increased by 8.3% since 2010. Over the same time period in California Manufacturing payrolls have expanded by just a fraction of that amount: 2.9%.

- Skills play a critical role in who has benefitted most from the current economic expansion. During the recession, unemployment rates in California for individuals with a bachelor's or graduate degree never rose above 10%. And at this writing, unemployment rates are significantly lower for those with a bachelor's degree (3.5%) or a graduate degree (3.1%) versus those with some college (6.5%) or a high school diploma or less (9.4%).
- Over the three years ending 2015, wage growth has been robust in high-wage sectors, but has been below average in lower wage industries including Construction, Logistics, Tourism, and Retail. This outcome suggests that income inequality in the state will continue to worsen, which may lead to further political polarization in Sacramento and hinder the state's ability to address its long-term challenges.
- The good news is the outlook for both construction and manufacturing employment in California is positive—both industries are expected to continue adding jobs in 2015 and 2016. However, given the significant losses these two sectors suffered over the prior decade, neither industry is expected to return to its earlier peak level until at least 2020 for construction. Indeed, in the case of manufacturing, the industry may never return to its former peak.

Exports and Troubles Abroad: Turmoil in Europe/Greece and the downgraded outlook for Chinese economic growth have reignited speculation about the likelihood of another recession in the near term. While Beacon Economics remains firmly in the “no recession on the horizon” camp, economic woes abroad could affect exports at California air and seaports.

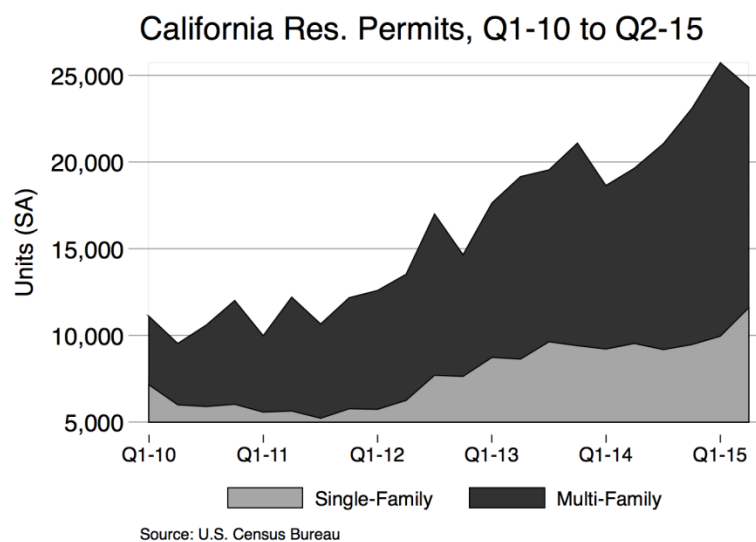
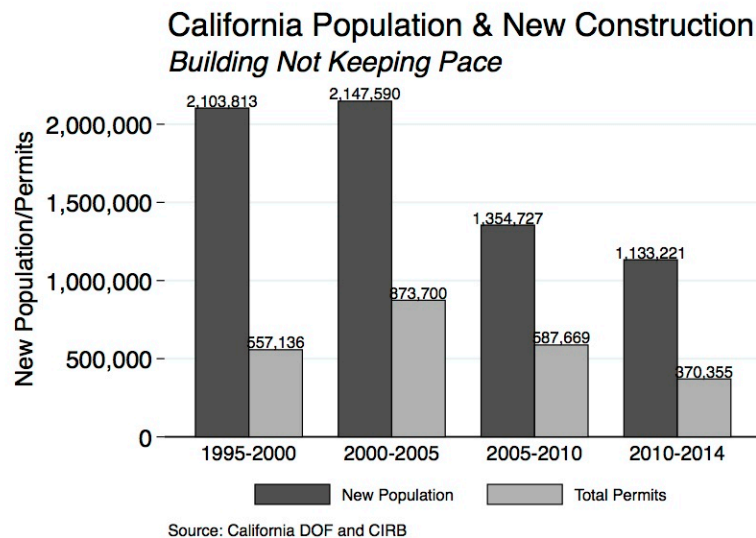
- Through July 2015, loaded containers for export at the Ports of Los Angeles and Long Beach were down 12% over the same time last year. However, import traffic has held relatively steady, which will help provide alternative demand for the state's Logistics industry.
- Also, a slowdown in export trade does not necessarily imply a major setback in production in the state. Many of the goods shipped through California's ports are produced out of state and brought in by truck or rail to access overseas markets. It isn't clear whether slowing exports has broader implications for the state's agriculture or manufacturing sectors.
- One thing is clear: The United States dollar has yet to shed its status as a safe haven for foreign



investment. As returns in Europe dwindle in response to quantitative easing by the European Central Bank, foreign investors continue to pump money into U.S. bonds. The result has been a dollar that strengthened over the course of 2015, which has reduced the competitiveness of U.S.-produced and California-produced goods and services abroad.

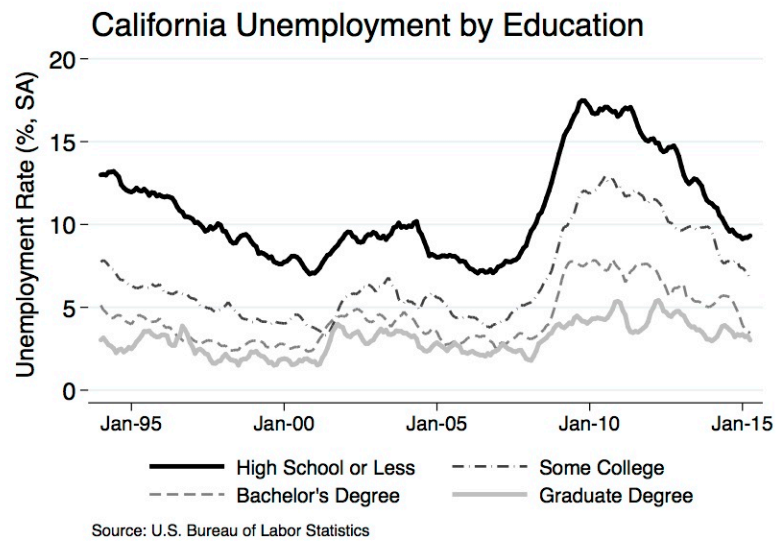
Home Unaffordability: While the cyclical effects of the recession have waned, the economic expansion has brought California's structural housing issues to the fore. Chief among these is the state's habitual under-building of new residential units, which has exacerbated the affordability problem over the past 30 years. Home building has simply not kept pace with population growth. Now that home prices are rising again, homes are affordable for a smaller and smaller share of Californians. But given the limited supply, this group still represents a large enough pool of buyers to maintain significant upward pressure on the state's housing market.

- The good news is that home prices, although growing, have yet to reach a level that Beacon Economics would characterize as a bubble. In fact, when taking historically low interest rates into account, financing the monthly payment for a median-priced home in the state requires just 26% of the state's median income compared with more than 50% at the height of the bubble. At Beacon Economics, the running joke is that California is back down to historic levels of *unaffordability*.
- Construction in California is booming. More than 130,000 new residential permits have been issued during 2014-2015 alone. Unfortunately, the state has a deep hole from which



to dig out, and this new supply has done little to mitigate growth in housing costs. Housing costs were rising at a 6% pace during 2015.

- The rapid growth of high-skilled job sectors poses a challenge—both for the economy in general and for the housing market in particular. High-skilled industries were able to expand at an accelerated pace while there was still

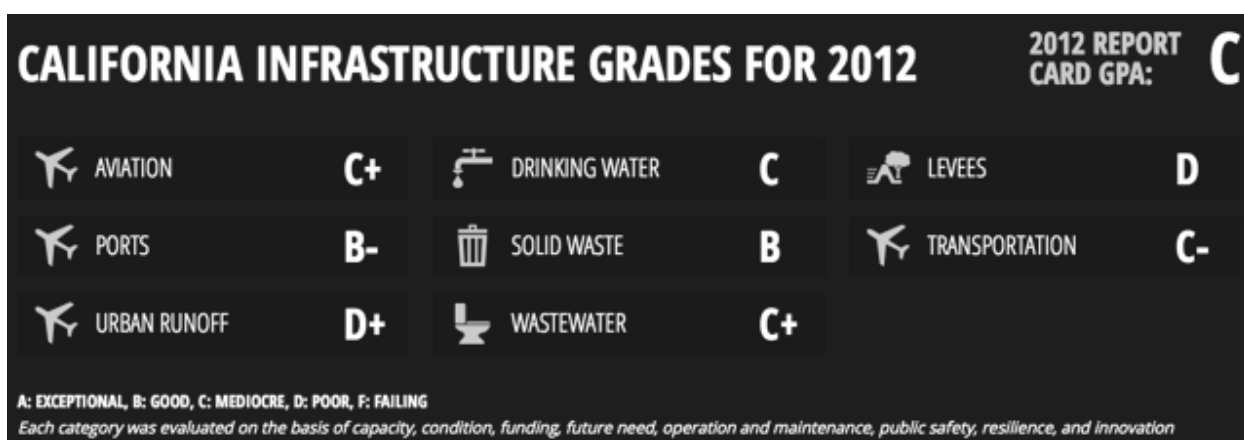


slack left in the economy following the recession and there were more workers available to hire. However, as noted above, the market for skilled workers tightened significantly over 2010-2015 years.

- Today there are fewer highly educated workers available, which is expected to continue driving wage growth. As available labor supply dwindles, this trend will either hinder the economy's ability to grow by exhausting the supply of skilled labor or push home prices higher by attracting more skilled labor to compete for a limited supply of housing in a state already infamous for excessive housing costs. This situation means that a larger share of income will go towards housing for both high- and low-wage workers—a fairly scary scenario given that California is already home to eight of the 10 most expensive housing markets in the nation.
- California's housing market is expected to remain tight for some time, with home prices continuing to increase. While the state's population grows, the economy heals, and both bank lending and construction increases, the California Environmental Quality Act, Proposition 13, NIMBYism, local zoning/permit regulations, a litany of fees, and compliance-related costs prevent the state's housing supply from rising fast enough to mitigate growth in home prices. The cost of housing in California will remain one of the state's most serious policy challenges for the foreseeable future.

Fiscal Challenges Loom: Governor Jerry Brown has rightly received praise for bringing order back to California's budget. However, that the state's General Fund has returned to a surplus does little to ease the real fiscal challenges facing the state. Three issues in particular warrant further attention from Sacramento in order to ensure California's current and robust growth continues in the coming decades.

- Much of the improvement in state revenues is due to the passage of Proposition 30—a voter-approved, temporary, tax increase for the state's top income earners. Governor Brown sold this to Californians as a temporary measure in order to maintain revenues during the worst economic crisis since the Great Depression. However, any reduction in the tax rate would have



short-run effects on California’s ability to finance its General Fund obligations and that may result in the extension of these initially temporary measures. A USC Poll suggested that voters are likely to extend Proposition 30 to provide additional funding for education if the issue is put before them.¹

- Of greater concern is that despite the recent surge in revenues, California still faces a mountain of under-funded pension obligations. Although there are deep political divisions to overcome regarding the public pension issue, it is clear something has to give: the combined under-funded portions of CalPERS and CalSTRS alone are estimated to be nearly \$150 billion.² Recent economic growth and stock market gains have done little to alleviate concerns over this controversial aspect of public policy.
- California is way behind on the infrastructure investment it needs to make to ensure future growth and development. The American Society of Civil Engineers (ASCE) gave California a grade of C+ on its infrastructure. While the state has undertaken some infrastructure projects, the ASCE estimates California needs to invest more than \$650 billion in new infrastructure over ten years just to raise its infrastructure grade to a B.
- When the next downturn rears its ugly head, California will not have the wherewithal to address long-term issues such as pensions and infrastructure. This fact is all the more reason to begin to chipping away at these complicated and vital issues now, while that state’s economy is booming, rather than kicking the can down the road for future policymakers to address.

Conclusions

The immediate short-term outlook for California looks bright. We see no recession on the horizon despite some international economic worries. Global worries may be reflected in a weakened export picture but there is considerable domestic momentum to keep the economy moving forward. On the other hand, despite its underlying economic strengths and its solid recovery from the Great Recession,

¹<https://pressroom.usc.edu/poll-calif-voters-back-extending-proposition-30-to-funnel-more-money-to-public-schools/>

²CalPERS covers most state workers (excluding the University of California which has its own system) and many local government workers. CalSTRS covers teachers.

California has long-term structural challenges to face. The big question for the long run is how the state's political system will deal with those challenges.

CHAPTER 6

Enacting the California State Budget for 2015-2016: The Governor Asks the Stockdale Question

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This article is based on information only through mid-August and
does not reflect subsequent developments

Who am I? Why am I here?

Admiral James Stockdale
Ross Perot's Third Party Vice Presidential Candidate
at a 1992 television debate¹

Jerry Brown is the only governor to be elected to four terms, albeit in two iterations.² Unless term limits are lifted, no subsequent governor will match his record. But even if he had a more conventional gubernatorial history, i.e., if he hadn't been governor in the mid-to-late 1970s and early 1980s, by 2015, he would have "owned" the condition of the state budget. After all, his second iteration began with his (re)election as governor in 2010. When he took office in January 2011, and for six months into that term, he was under the budget of his predecessor, Arnold Schwarzenegger. But by the time the 2015-16 state budget was being proposed and enacted, there had already been three purely Brown state budgets during his second iteration. The budget of 2015-16, whose enactment we review below, was Brown's fourth.

So in what condition do we now find state finance as of the fourth Brown budget of his second iteration? Clearly, the sense of ongoing crisis that characterized much of the earlier Schwarzenegger period is gone. The change in circumstance is partly due to the persuasive powers of Governor Brown who successfully urged voters in 2012 to enact temporary income and sales tax increases under Proposition 30. And it is partly due to the general U.S. economic recovery that has continued since the Great Recession bottomed out in 2009. But the state budget remains vulnerable to any future downturn in the U.S. and California economies.

Budget chapters in previous editions of *California Policy Options* have traced the history of the California state budget through the regimes of earlier governors. In this edition, however, we focus chiefly on the second iteration of Jerry Brown. In many respects, the state budget is the most important enactment of the legislature and governor since it reflects *de facto* public policy priorities in many areas. And in Brown's fourth term – his absolute last given the term limits now in effect – and given his age, Brown

¹<https://www.youtube.com/watch?v=uKpX-5jQjQ0>. Much of the source material in this chapter is derived from news sources such as the *Sacramento Bee* and *Los Angeles Times*. For space conservation, references in this chapter are generally confined to direct quotes and data sources. Dates on such references are from online versions and may not correspond to dates of appearance in print versions. This chapter takes the budget story only through the enactment of the 2015-16 budget and is based on information through August 2015. Later developments are not reflected.

²Earl Warren holds the record for *consecutive* terms. He was elected to three terms (1942, 1946, and 1950) although his third term was not completed due to Warren's appointment as Chief Justice of the U.S. Supreme Court in 1953.

seems to be thinking of legacy.³ He seems to be asking the Stockdale question but at an existential level: *Who am I and why am I here?* And what he wants to leave behind in California is heavily wrapped up in the state budget.

Wanted and Unwanted Legacies

The past is never dead. It's not even past.

Author William Faulkner⁴

Because of the long hiatus between his two iterations as governor, Brown has managed to be the one of the youngest and now the oldest governor.⁵ In his first iteration, Brown's priorities seemed to be framed by doing and being the opposite of his father and former governor, Pat Brown. Son Jerry saw his dad fail in an attempt to be re-elected to a third term in 1966, losing in that election to Ronald Reagan due to a combination of a state budget crisis and social unrest (the Watts Riot and student protests at UC-Berkeley). Jerry seemed to take that lesson to heart and developed his career as a fiscal conservative who was tough on social and campus disruption. Furthermore, where Dad was a familiar political type, Son was going to be unconventional.

Whatever his failings, Pat Brown *had* left behind three legacies: expansion of the freeway system, construction of a major state water project, and the Master Plan for Higher Education. The last entailed new campuses and distinct roles for the University of California (UC), what is now the California State University (CSU) system, and the community colleges. These accomplishments were all confined to California. If they affected other states, it was only because those states chose to imitate California. Son Jerry now wants to leave his mark on California like his dad, but also to touch the outside world.

During his first iteration as governor, perhaps in an effort not to repeat the electoral history of his father in 1966, Jerry Brown took on the persona of the anti-Pat (skepticism toward big capital infrastructure) and added fiscal conservatism and – as noted – opposition to student unrest. Brown attracted national attention with his combination of being a New Age Democrat, his fiscal conservatism, and seeming disenchantment with big (dad-type) public projects. The publicity he received nationally for his unusual persona even led to two campaigns for the presidency (1976, 1980). But things did not end well for Brown by the finish of the first iteration.

³Governor Brown's older sister died at age 81 in March 2015. The governor at this writing is 77.

⁴<http://memory.loc.gov/ammem/today/sep25.html>

⁵The only governors who began their terms at ages younger than Jerry Brown were figures of the mid-nineteenth century.

The New Age image led to the appellation, “Governor Moonbeam,” which still rankles Jerry Brown today. Fiscal conservatism by 1978 led to the buildup of a huge reserve in the state’s general fund at a time when local property taxes in California were shooting upwards due to a housing bubble. Homeowners asked why their local taxes were going up at a time when so much tax revenue was being collected – and not spent – by the state. Voters didn’t make the state vs. local distinction when it came to taxation. The upshot was the property tax revolt in the form of Prop 13 of 1978. Proposition 13 drastically cut and capped local property taxes and required a state bailout of local governments, especially school districts.

The bailout drain plus two back-to-back national recessions led to a major state budget crisis as Brown’s second term was ending. Fiscal conservatism didn’t avert the crisis and certainly contributed to it via passage of Prop 13 and the resulting need for a state bailout of local authorities. Brown – in a seeming turnaround on big projects late in his first iteration – supported building a major water project, a “Peripheral Canal” in the Bay Area. But the Canal was rejected by voters. He ran for the U.S. Senate at the end of his second term and was defeated by Republican Pete Wilson, thereafter disappearing from state politics for several years. At the same time that Jerry was disappearing, Pat Brown’s defeat in 1966 was increasingly being forgotten while his legacy in transportation, water, and higher education elevated his image as a Great Builder during a political and economic Golden Age. In contrast, absent a comeback, son Jerry’s legacy was going to be Moonbeam and fiscal bust. But, of course, there was ultimately a comeback.

The Return from Obscurity

Fictional California Governor trying to fend off a scandal: *If you drag me into this business... you’ll have as much of a future here as Jerry Brown.*

Fictional San Francisco Assistant District Attorney: *Who’s Jerry Brown?*

From the 1995 film *Jade*

Brown’s political comeback began with his election as chair of the California Democratic Party in 1988. But he resigned in 1991, after presiding over a disappointing year for state Democrats in which they lost the third gubernatorial election in a row.⁶ There was a third run for Brown for the presidency in 1992 on

⁶Republican George Deukmejian had twice defeated Democratic LA Mayor Tom Bradley for governor in 1982 and 1986. In the 1990 election, Deukmejian was succeeded as governor by Republican U.S. Senator Pete Wilson who defeated Diane Feinstein and who had defeated Jerry Brown in the 1982 senatorial race. Wilson, when he ran for re-election as governor in 1994, defeated Jerry Brown’s sister, Kathleen Brown.

an odd mix of left/right political positions which made a splash. But no nomination ensued and once again Brown disappeared from the election scene.

Brown became a commentator on left-wing Pacifica Radio although at the time he seemed intrigued with right-wing guru Arthur Laffer and his tax proposals. Again Brown fell into relative obscurity. Eventually, however, Brown returned to public office in 1999 as mayor of Oakland – having run as an independent, not a Democrat. After achieving that office, he went on to become state attorney general (elected 2004), running as a Democrat. His period of return to electoral life encompassed the dot-com boom and then the bust. During that era, Brown saw his former gubernatorial chief of staff, Gray Davis, first elected as governor in 1998 and then recalled in 2003 during the bust-induced state budget crisis. Davis was replaced in the recall election by movie action hero Arnold Schwarzenegger who promised to fix the state's budget situation.

As governor, Schwarzenegger essentially borrowed his way out of the budget crisis left by Davis using an enlarged version of a borrowing plan Davis had hoped to follow.⁷ But the California economy tanked during Schwarzenegger's second term thanks to the Great Recession. Indeed, the recession was worse in California than in most of the rest of the U.S. because the housing boom/bust and flaky mortgage crisis – the root of the recession – was more concentrated in the state than elsewhere. The state's fiscal condition deteriorated to the point that in 2009, California could not pay all its bills and handed out IOUs instead. In the end, when Schwarzenegger left office – after the 2010 election that returned Brown to the governorship – his popularity ratings were as low as Davis' at the time of the 2003 recall.

By the time Brown ran for governor in 2010, a good portion of the electorate had no direct recollection of his first iteration as governor. The Moonbeam/fiscal bust legacy was resurrected by his opponent in that election, Republican Meg Whitman, the former CEO of eBay. But Brown succeeded in portraying himself as someone with much experience in state government who could solve the state's budget problems that outsider candidates – such as Whitman and Schwarzenegger – could not. He promised that there would be no new taxes *without a vote of the people*. The qualification – *without a vote of the people* – was important. It was not a promise of no new taxes. It was only a promise that the people would vote yes or no on any new taxes that might be proposed.

⁷The state constitution bars borrowing for general expenditures and Davis had concocted a complicated and legally-dubious scheme to get around the constitutional restriction. Schwarzenegger, in contrast, got voters to approve an amendment to the constitution that permitted the borrowing on a one-time basis. The last of the Schwarzenegger Economic Recovery Bonds was paid off in August 2015.

In fact, the only way state taxes could be raised as a practical matter was through a vote of the people. Thanks to Prop 13, the legislature couldn't enact tax increases without a two thirds vote. But legislative Democrats did not have a two thirds majority in either house. And minority Republicans would not vote for any tax increases.⁸ So any tax increase would, by default, require a ballot proposition.

Budget Background

It's a pretzel palace of incredible complexity.

Governor Jerry Brown referring to the state budget⁹

Before we trace the construction of the 2015-16 budget, we need to present some fiscal basics. When people talk about the state budget, they usually are referring to the general fund. State and local governments typically have a general fund that deals with ongoing operating expenses. For the State of California, such expenses include education, various social welfare programs, the prison system, and a variety of other functions. Apart from the general fund, there are other funds that are dedicated to specialized purposes. Transportation is the most prominent example. But there are many other funds. In some cases, they have earmarked revenue sources; for example, the state gasoline tax goes to transportation. Funds raised through bond flotations may also support special funds. Apart from the general fund and the special funds, there are also large state-run pension funds covering state employees and many local employees.

The major source of revenue for the general fund comes from taxes. There is also miscellaneous fee income, interest on monies held by the state, and receipts from other sources. However, the bulk of general fund revenue comes from three sources: the state personal income tax, the sales tax, and the corporate tax. As Chart 1 shows, the tax that looms largest is the personal income tax, a highly volatile tax heavily dependent on high income tax payers whose incomes fluctuate with both the general economy and with financial markets.

The accounting methodology used to monitor and budget the various funds – including the general fund – is largely in the hands of the legislature. There is a national entity – the Governmental Accounting Standards Board or GASB (pronounced “gaz-bee”) – that has some say in the way states present their

⁸A few Republicans did support temporary taxes in 2009 and were essentially drummed out of office. So there would be no repeats of that experience by those GOP members who remained or were newly elected.

⁹Quoted in Ben Adler, “What went wrong with California's budget,” *Marketplace*, June 11, 2012. Available at <http://www.marketplace.org/topics/economy/what-went-wrong-californias-budget>.

accounts, especially when they go to the financial marketplace to borrow. But ultimately, the legislature in enacting budgets can define terms and procedures as it likes.

As a result, budgetary terminology can be confusing and misleading. Because the general fund is the operating budget, the state tends to treat it as analogous to a checking account that a household might use for its day-to-day expenses. And that approach can lead to problems, particularly because federal terminology differs from state.

When you hear that the federal government is running a *deficit*, what is meant is a flow concept. The tax and other receipts flowing in are falling short of the expenditures flowing out of the Treasury in a given fiscal year. Although they have been rare, a federal *surplus* means the opposite: the revenue flowing in exceeds the expenditures flowing out over the course of a fiscal year. In contrast to the flow concept, when we talk about the federal *debt*, we mean what is owed to creditors *at a point in time* (a stock concept). It is important to maintain a distinction between stocks and flows and, when talking of flows, to use a fixed, standard time period.

Unfortunately, at the state level, stocks and flows are sometimes mixed together by politicians and officials. Time periods used sometimes combine fiscal years (or parts of years) and sometimes do not. The confusion results in part from the checking account analogy. If your checking account has any money in it at a point in time, a stock concept, you may feel that things are ok and that you can write more checks without becoming overdrawn.

So sometimes, state politicians and officials will say such a situation is a budget “surplus,” a use of that term that differs from the federal practice. It would be more appropriate to characterize that situation as having a positive reserve. When the account is overdrawn, they may call the situation a “deficit” rather than a negative reserve. State officials may also use the federal terminology at times. Or they may use vague terms not found in any accounting textbook, particularly during periods of budget distress.

You might hear the fiscal situation described as a budget “gap” or a “shortfall” or a “hole” that needs to be plugged. The gap, shortfall, or hole may be assigned a numerical value without any definition of whether stocks or flows are being considered or of what timeframe is involved. Without a definition, the speaker may use a large dollar amount to shock you or to impress you with how tough the job will be to fix the budget. Or the speaker may use a small amount to show that the problem would be easy to fix if only others would see the issues in his or her way.

We'll come back to accounting methodology below. But the problem of vague and shifting terminology is more than just a semantic issue. If you don't know where you are, it's hard to know where you have to go. You may not even know you are in trouble when you are. For example, suppose period after period, the balance in your checking account declined because you were putting less money into the account than you were taking out. Using federal terminology, you would be running a deficit. And if you kept going, eventually you would run out of funds and your checks would bounce.

But if you were to say that as long as there was a positive balance, you had a "surplus," you might think your fiscal situation was ok until the last penny was gone. You could have avoided the problem by using surplus and deficit to refer to the flows into and out of your account. You could have used another word – typically in the checking account case people talk about the "balance" in the account – to refer to the stock. Using consistent and well-defined terminology, of course, doesn't guarantee that you will behave prudently. But it's hard to be prudent, even with good intentions, if you are confused about your financial condition.

To avoid confusion, and to provide a picture of the state budget's condition, in this chapter we will use "surplus" and "deficit" to refer to flows during a defined fiscal year. $\text{Inflows} > \text{outflows} = \text{surplus}$. $\text{Outflows} > \text{inflows} = \text{deficit}$. We will characterize stocks – the amount of money in the general account – as "reserves" (which could be positive or negative at any point in time). But even with those more precise terms, there remains fuzziness in state budgeting.

Accounting methodology goes beyond just terminology. The reason we keep accounts for anything – a business, a nonprofit organization, or a government – is to understand its underlying financial condition. One way to monitor that condition is to keep track of cash inflows, outflows, and reserves. And the State of California does keep cash accounts. But cash accounting can be deceiving when it comes to underlying conditions. For example, the state's fiscal year begins on July 1 and ends on the following June 30. Suppose the state is due to make a payment to a supplier towards the end of June and mails a check to the supplier at that time. Suppose, however, that the supplier doesn't get around to cashing the check until a day later on July 1.

The state will have more cash on hand at the end of the fiscal year, because of the delay, than it would have had if the check had been cashed a day earlier. But the timing of the cashing of the check really doesn't matter when it comes to the underlying condition of the state. Nonetheless, the delay makes it seem that there is more of a surplus (or less of a deficit) in the expiring fiscal year and less of a surplus

(or more of a deficit) in the next year. So cash accounting can be misleading because of the accidents of timing. Indeed the timing effect could be used for cosmetic purposes to disguise problems. For example, the state, to make the current year look better, might issue a check late in the fiscal year knowing that it was likely to be cashed in the next year. (Yes, you may be shocked, shocked to learn that such behavior by the State of California has actually occurred!)

To try to avoid the effects of accidental or cosmetic timing, professional accountants use “accrual” methodology which aligns outflows and inflows to the time period in which they actually are supposed to occur, rather than when they do occur. The state budget enacted by the California legislature in fact is an accrual budget. In theory, therefore, it should be more illuminating about the state’s financial condition than the cash accounts. But that’s only “in theory.” Ultimately, the governor and the legislature define what is meant by accrual, so that the official budget data can be manipulated. Particularly during periods of budgetary distress, there is often pressure to make the budget situation look better than it is. But not always. Sometimes – if a governor wants to pressure the legislature to take corrective action – there can be pressure to make things look worse than it is.

Apart from manipulation, accrual methodology – because it involves assigning inflows and outflows to particular time periods to which they are linked – is also affected by formulas in the budget that are based on data estimates that change over time. Notable is Prop 98 – one of the most prominent examples of so-called “ballot box budgeting” in which initiatives set spending based on data-driven formulas. Prop 98 of 1988 and a related subsequent initiative created minimum state guaranteed spending on K-14 education based on three contingent formulas. The guaranteed funding comes from both general fund revenue and local property tax revenue. These revenues can be forecast but are not known for sure until after the fact. And they are assigned to the years in which the taxes were due, not when they were paid. Thus, what was supposed to be spent on K-14 in any given year may be determined retroactively.

It would be nice if there were some independent authority that would neutrally keep California’s state accounts in a standardized format and unravel manipulations and misleading terminology. There is an entity known as the Legislative Analyst’s Office (LAO) which has been around since the 1940s and which advises the legislature on budgets and other policy matters in a nonpartisan fashion. But in practice, LAO doesn’t see itself as being charged with keeping a consistent set of books for the state budget. It tends to go along with whatever numbers are enacted by the legislature.

For purposes of this chapter, all we can do is alert the reader to these issues. For the most part, we will use the cash account to look at the past. But since accrual accounting is what the legislature enacts, we will use it to examine the steps leading up to the enactment of the 2015-16 state budget.

A Cash History of Brown's Budget Making in His Second Iteration

Anybody who thinks there is spare change around has not read the budget.

Gov. Jerry Brown in May 2013¹⁰

Table 1 presents the cash accounts covering the second iteration of the Brown governorship. As noted, Brown was elected in 2010, defeating Republican Meg Whitman and taking office in early January 2011. Since the fiscal year doesn't correspond to the calendar year or the electoral year, the first Brown budget would not take effect until July 2011. It is interesting to note that on a cash basis, the final Schwarzenegger-era budget (ending June 30, 2011) was actually in surplus. That is, inflows exceeded outflows in that budget year. A combination of general economic recovery and temporary taxes enacted in 2009 was fueling the surplus.

The budget issue at that point involved two issues. First, although the state was running a surplus, past deficits meant that there remained a negative reserve in the general fund. Essentially, to cover that debt, the general fund was borrowing from other state funds by putting IOUs in them in exchange for needed cash. When the general fund borrows in that way, the activities that are supposed to be financed by those other state funds can run short of cash, and carrying out those functions is hindered. Second, as noted, some of the revenue flowing into the general fund was the result of temporary taxes enacted in 2009 at the depth of the budget crisis. Voters, however, had refused to extend the lives of those temporary taxes, and so the revenues they were generating would disappear unless those sources were somehow replaced.

Brown's initial budget strategy when he took office was to ask voters (once again) if they would extend the expiring Schwarzenegger-era temporary taxes. In principle, the legislature could have extended their life via a two-thirds vote, but that approach would have required some Republicans to lend their support, an event that was not going to happen. So voters would have to do the extending, if it were to occur. Brown had a choice of two routes to put the issue before voters. He could have used the initiative process, a voter petition to place the issue on the state ballot. Or he could alternatively use the

¹⁰Quoted in Chris Megerian, "Gov. Jerry Brown unveils cautious budget for deficit-free state," *Los Angeles Times*, May 14, 2013. Available at <http://articles.latimes.com/2013/may/14/local/la-me-brown-budget-20130515>.

legislature to put an extension proposition on the ballot. But utilizing the legislative route would also require a two-thirds vote.

Perhaps because his first iteration as governor occurred in a period of more bipartisan cooperation than existed by 2011, Brown thought that he could cajole a few Republicans to support the legislative route to the ballot. After all, the Republicans would be asked only to put the matter before voters, not to support the tax extensions. They could support letting voters decide and then campaign against the proposed ballot measure. To provide an incentive for Republican support, Brown was willing to negotiate some concessions regarding environmental regulations and other matters. But five months of bargaining proved fruitless; no Republican support was obtained.

The state constitution requires the legislature to enact a budget by mid-June. But before 2011, there was no penalty if the legislature failed to meet the deadline, and it often did fail. However, voters had enacted a change in the constitutional budget process in 2010. They reduced the supermajority of two thirds required to pass a budget to a simple majority (which the Democrats had).¹¹ But the supermajority for tax increases – or extensions – was retained. In exchange for greater legislative authority, however, voters required that legislators would forfeit pay for every day beyond the deadline that there was no budget. As it became clear that Brown’s negotiations with legislative Republicans were going nowhere, the legislature hastily passed a budget of its own to meet the June 15, 2011 deadline.

Brown quickly vetoed the legislature’s budget and the state controller, John Chiang, ruled it wasn’t a valid budget due to various technical deficiencies. Since the controller issues state paychecks, he refused to pay the legislature. News media then made heroes of Brown and Chiang on the misconception – certainly for the controller – that the veto and ruling was due to an unbalanced budget.¹² There was subsequent litigation on whether the controller had the authority to determine what was or wasn’t a valid budget. The ultimate court decision, many months later, was that only the legislature could determine the legitimacy of its own enactment. Nonetheless, the lost pay was never returned. Neither the governor nor the state controller was anxious to correct the public impression that their actions were taken to ensure a “balanced” budget.

¹¹The supermajority requirement to enact a budget dated back to the Great Depression of the 1930s. The requirement of a two-thirds supermajority to enact tax increases was part of Proposition 13 of 1978.

¹²Chiang was termed out in 2014 as controller. He ran for state treasurer and was elected. He indicated in August 2015 that he was considering running for governor in 2018. Being a fiscal hero was clearly a political boost.

With it now obvious that no deal could be reached with the Republicans, the governor and legislature agreed on a budget that was “balanced” only on paper – not in reality – because of a phantom \$4 billion assumption of extra revenue. The budget did not specify which tax or taxes would bring in the phantom revenue, only that it would appear somewhere and somehow. At that point the controller accepted the new budget as valid and the governor signed it.

As Table 1 shows, on a cash basis the state ended the fiscal year 2011-12 with a deficit. Table 2 also shows that on a cash basis, receipts ended up over \$4 billion below forecast, not a surprising result given the phantom assumption. To Brown, the lesson for the next fiscal round was clear. Trying to obtain Republican legislative support for a tax proposition was not going to work. So the following year, he went the initiative (petition) route and put what became Proposition 30 to voters which provided temporary income and sales tax increases. Voters approved the proposition and, as Table 1 indicates, the state began running surpluses thereafter. Moreover, by the end of 2013-14, the negative reserve in the general fund had turned positive.

Budgets are inherently forecasts. Actual tax collections, as opposed to the estimates used in budget making, are determined by the tax structure as it is affected by, and reflects the pace of, the economy. Forecasts of the pace of economic growth (or decline) are inevitably uncertain. The actual after-the-fact outcome will likely differ from the forecast. And note that when governors make their initial budget proposals in early January, they are projecting how the economy will be almost six months in the future (the start of the fiscal year) and how it will be 18 months from the proposal’s date (when the fiscal year ends). Revenue flows are based on those uncertain forecasts.

After the 2011-12 fiscal year, with its phantom overestimate of revenues, Brown tended to put forward budgets with “conservative” estimates of forthcoming receipts. As Table 2 shows, thereafter actual receipts always exceeded the forecast estimates used in budgeting. In contrast, on the expenditure side, as depicted in Table 3, the forecast expenditures showed no consistent deviation from the actual results. Put another way, use of conservative receipt forecasts and reasonably accurate expenditure forecasts meant that there would be annual after-the-fact “surprises” in funds left over that could be added to reserves.

Political Backdrop

I can tell you in the last four years, we haven’t solved all the problems, but boy, what momentum we have.

Calendar 2014 was also a gubernatorial election year. But there was not much doubt of the outcome. Brown had been elected in 2010 on a promise that he could fix the state budget based on his knowledge of the workings of California's governmental institutions. He argued that he could do so in a way that had escaped the termed-out political amateur Arnold Schwarzenegger or Brown's 2010 Republican opponent – and political amateur – Meg Whitman. With the fiscal crisis no longer an issue by 2014, Brown would certainly be re-elected. He was a Democrat in a state that has leaned Democratic since the early 1990s, albeit not always at the gubernatorial level. In Brown's case, he had arguably done what he promised voters in 2010 he would do, and voters are likely to reward delivered promises.

Really, the only issue was who Brown would beat in the election. In 2009, Governor Schwarzenegger – once he had agreed to temporary tax increases – needed a few Republican votes in the legislature to enact them. One of the Republicans who eventually agreed to go along was Assemblyman Abel Maldonado. But Maldonado – who was a “moderate” elected from a swing district – had a price to extract for his cooperation. The price was that legislature had to approve putting a constitutional amendment on the ballot (which voters subsequently passed) that created a “top-2” nonpartisan primary system for state elections.

Under top-2 rules, all candidates run in one unified primary, regardless of their party affiliation. In the general election, the top two candidates – regardless of party affiliation – run against each other. The system is thought by proponents to encourage moderate candidates such as Maldonado. Maldonado was also rewarded by being nominated for lieutenant governor by Schwarzenegger when a vacancy opened up for that office, and he was ultimately confirmed by the state senate after a protracted political battle.

The top-2 system, because it is nonpartisan, can result in two candidates of the same party running against each other. But in 2014, no major Democrat was going to oppose Brown, so Brown's rival would definitely be a Republican. But which one? Early on, Maldonado toyed with being a gubernatorial candidate, but he got no traction and dropped out. That left a “tea party” Republican, Assemblyman Tim Donnelly, and Neel Kashkari, an obscure Republican U.S. Treasury Department official, in the race to become the opponent to Brown (and who would surely lose to Brown).

¹³Quoted in Adam Nagourney, “In California, Jerry Brown's Opponent Makes Most of Lone Debate,” *New York Times*, September 5, 2014. Available at <http://www.nytimes.com/2014/09/06/us/politics/jerry-browns-opponent-attacks-waste-in-sacramento.html>.

Republican establishment figures definitely did not want Donnelly as the top-of-the-ticket Republican in the general election of November 2014 because he had a habit of doing and saying embarrassing things.¹⁴ They were fearful that the media attention Donnelly would generate as Brown's rival could adversely affect other Republicans on the ballot who had a chance of election for state and legislative offices. There was even concern that the electoral prospects of out-of-state Republicans could be upset by a Donnelly candidacy if he damaged the GOP brand.

So essentially, enough money was contributed to the Kashkari campaign to make him the number two vote-getter in the primary, albeit a distant second to Brown.¹⁵ Thereafter, however, funds for the campaign dried up since Kashkari had no chance of beating Brown. Kashkari had money, much of it personal, for only a couple of limited distribution TV ads, both education-themed. In one, he saved a drowning child and berated Brown's school policy. In the other, he spoke more conventionally in front of a school. For additional publicity, Kashkari had to rely on relatively costless YouTube videos and stunts such as posing as a homeless man in Fresno (inadvertently causing an affront to the Republican mayor of that city).¹⁶

Brown really had no need to campaign for himself. But he did want to promote two ballot propositions, a water bond (Prop 1) and a "rainy day" reserve in the general fund (Prop 2).¹⁷ So the only TV ads for Brown that appeared in the general election were the governor touting the two propositions and telling

¹⁴Donnelly replaced Assemblyman Anthony Adams in the 2010 election. Adams, one of the Republicans who supported the 2009 temporary taxes, was essentially drummed out of the Party and did not seek reelection. Donnelly was a prominent participant in the Minuteman movement that would patrol the border looking for illegal immigrants. At one point, he accused Kashkari of wanting to impose Sharia law, although Kashkari is a Hindu, not a Muslim.

¹⁵Brown actually got a majority of votes in the primary, 54% compared with 19% for Kashkari and 15% for Donnelly. In typical nonpartisan primary system – such as are found at the local level in California – a candidate who receives a majority – not just a plurality – would be automatically elected at that point and would not have to run in the general election. But under top-2, even if a candidate gets a majority, he/she must run against the number two candidate in the general election.

¹⁶Mayor Ashley Swearengin, who was running for state controller, refused to endorse Kashkari. Kashkari also made some loose remarks on a talk radio show about drug testing all legislators which he later explained as a joke. Meanwhile, even after losing the primary race for the second spot against Brown, Donnelly continued to make waves. He refused to attend a luncheon to which he was invited at which Brown hosted the president of Mexico. (He was upset because Mexico was holding a U.S. citizen who had crossed the border into Mexico with a forbidden firearm.) Later, Donnelly chose not to run for re-election to the state assembly. He became a radio talk show host and, at this writing, has filed a referendum intended to block mandatory vaccination for school children. Donnelly would not endorse Kashkari in the general election. He continued to complain, after the election, that the GOP establishment was turning against his supporters.

¹⁷Normally, the propositions would not have had 1 and 2 numbering and would have landed on the ballot with numbering indistinct from the other propositions on the November 2014 ballot. The legislature, however, required the easy-to-remember numbering to help ensure their passage.

voters to “save water; save money.” Kashkari, as noted, had only limited funds for advertising and a poll taken in September 2014 indicated that many prospective voters could not identify him as the Republican rival to Brown.¹⁸ A poll taken a week or so before Election Day produced a similar result. But it also indicated that a large minority of voters didn’t know that Brown was up for reelection, perhaps because all of his ads were for Props 1 and 2 and none explicitly referred to the gubernatorial race.¹⁹ Brown reluctantly agreed to a single TV/radio debate with Kashkari, but at a date and time that tended to minimize the likely audience.²⁰

In the end, Brown received 60% of the vote in the two-man race. It is worth noting, however, that an obscure Republican with few campaign resources nonetheless received 40% of the vote against a popular governor who in the popular mind had fixed the state budget problem. The 40% vote total Kashkari received suggests that Republicans – even in their diminished condition in California – still have a chance for statewide office *if* they can put up attractive candidates with resources and *if* they can change the image of the Party in the state. Of course, those qualifications are two big “ifs.”

Both Propositions 1 and 2 passed in November 2014; Prop 1 with a 67% vote in favor and Prop 2 with 69% in favor. The passage of Prop 2 had in fact been assumed in the budget enacted for 2014-15. Because reserves now accumulate in both the “regular” general fund reserve and in the rainy day fund (Budget Stabilization Account or BSA), Table 1 includes the rainy day fund in the calculation of the budget surplus for 2014-15.

There were two consequences of the 2014 general election for the future. Whatever the merits of having a separate rainy day fund, its presence adds to the opaqueness of the state budget process which has already been discussed. In addition, with there being essentially no contest for the top state office in 2014, voter turnout was very low. Low turnout meant that the number of votes cast for the governor (both candidates), was low. That figure, however, is used in a formula that sets the minimum number of signatures necessary to put propositions on the ballot. With a low threshold for signatures, the incentive

¹⁸Chris Megerian, “Only 1 in 4 likely voters can identify Gov. Jerry Brown’s opponent,” *Los Angeles Times*, September 12, 2014.

¹⁹Phillip Matier and Andrew Ross, “40% of voters unaware Jerry Brown is seeking another term,” *San Francisco Chronicle*, November 2, 2014.

²⁰Brown claimed he had time for only one debate and that no incumbent governor had ever agreed to more. In fact, Brown had agreed to four debates as the incumbent governor during his 1978 re-election campaign. The Brown-Kashkari debate took place the Thursday after Labor Day and two months before the general election. The debate can be seen at <https://www.youtube.com/watch?v=HKjuxVjPbMk>.

to put issues on the ballot for 2016 by initiative or referendum was increased since fewer signatures meant lower costs for obtaining successful petition outcomes.

A Numerical Look Ahead at the 2015-16 Budget

This is a sound, well thought-out budget. Yet, the work never ends and in the coming months we'll have to manage our resources with the utmost prudence...

Gov. Jerry Brown on reaching deal
with legislative leaders on 2015-16 budget²¹

There are various steps in the annual state budget process, some specified in the state constitution, and some determined by past practice. The constitution requires the governor to submit a budget proposal in early January before the start of the fiscal year the following July 1. Typically, however, the Legislative Analyst's Office will put together what is sometimes called a "workload budget" in the preceding November. A workload budget assumes the continuation of existing spending programs and tax law known at that time. Of course, in actual fact there could be changes in both programs and taxes. Thus, the LAO's budget is basically just a benchmark, not a true budget proposal. It tells the governor and legislature what will likely happen if they do nothing (and if the economy plays out as the LAO expects).

Essentially, in the usual budgetary sequence, the release of the LAO's workload budget is step 1 in the budget process. Step 2 is the governor's constitutionally mandated initial proposal. After step 2, the legislature will hold hearings and begin putting together its own budget ideas. As time passes, there will also be new incoming information on the state of the economy, on revenue collections relative to past forecasts, and on expenditures relative to forecast values. Note that the expenditure side of the budget, just as the revenue side, is a forecast. Many state programs depend on uncertainties such as the number of prisoners that will be held in state prisons or the number of persons that will be eligible for various social welfare programs.

By tradition, in May before the new fiscal year begins, the governor submits a "May Revise" budget as step 3 in the budget process. The May Revise represents both new economic information since January as well as political information as to legislative priorities. Finally, there is a constitutional requirement that the legislature enact a budget in mid-June. The governor can sign or veto the complete budget. But typically there has been some type of deal in advance between the legislative leaders and the governor. Still, the governor – even after a deal – can apply line-item vetoes to specific expenditures. At that point,

²¹Quote from governor's media release, June 16, 2015. Available at <http://gov.ca.gov/news.php?id=19005>.

step 4, there is a “final” budget (although there may still be changes through subsequent legislation during the fiscal year).

Table 4 shows the four stages of the 2015-16 budget starting with the November 2014 LAO budget estimate. Note that the numbers on Table 4 use the accrual methodology described earlier. It would be nice if some state agency were to provide a reconciliation between the cash numbers presented earlier and the accrual numbers. Sadly, as noted earlier, none do. But using the accrual numbers, there are two points worth highlighting.

First, note that as time progresses, the estimated revenue rises. Since, as pointed out earlier, the governor likes to use conservative revenue estimates, there is a tendency for actual revenues coming in for the ongoing fiscal year to exceed projections. So there is pressure to up the revenue forecast for the forthcoming year to be more realistic. However, the governor still pushed for conservative estimates, and his ultimate deal with legislative leaders included insistence that his May Revise revenue estimates be used in the final 2015-16 budget. As Table 4 shows, the May Revise estimates were indeed what was used.

Second, the combined reserve (regular plus rainy day) in the general fund projected for the end of the 2015-16 fiscal year is \$5.5 billion. Spending for the year is about \$115 billion. So the ratio of reserves to spending is projected to be under 5%. Even if we allow for the governor’s conservative revenue estimate, past history suggests that a reserve total in the 5% range would be quickly swallowed up by any negative shock to the state’s economy. So for now California remains in a precarious budgetary situation, even if there is no crisis at the moment.²² With that advance numerical view of the budgetary outcome for 2015-16, let’s look more closely at how the political process produced that outcome.

Summer 2014

I don’t have any comments here. Sitting among the beautiful trees at the waters of Lake Tahoe, my mind is drawn more to poetry than politics.

Governor Brown at an environmental meeting at Lake Tahoe²³

²²Under Prop 2 of 2014, the BSA alone could climb to about 10% of the budget eventually. (And there could also be “regular” reserves in the general fund in addition.) However, the path to such a BSA reserve would depend on the ups and downs of the state economy.

²³Quoted in David Siders, “Among the trees, Jerry Brown’s mind ‘drawn more to poetry than politics,’” Capitol Alert blog of *Sacramento Bee*, August 9, 2014. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article2607111.html>.

During the Schwarzenegger budget crisis era, when budget agreements were overdue and there was no deal until well into the fiscal year, the summer months featured headlines on the inevitable problems that arose as particular programs lacked funding. But once voters changed the rules so that a simple majority in the legislature was able to pass a budget, and with a combination of an improving economy and Prop 30 temporary taxes, summer 2014 was a quieter time. Indeed, in the summer of 2014, given the lack of realistic opposition to Governor Brown's re-election, headlines were hard to come by.

News reporters searching for material could write about such matters as a local billionaire's plan to divide California into six separate states, as if such a proposal had the remotest chance of coming to pass.²⁴ There was a flurry of excitement around a possible ballot proposition to ask voters their opinion on the U.S. Supreme Court's *Citizens United* campaign funding decision. But the California Supreme Court eventually took it off the ballot. At the time, the ongoing drought was just beginning to creep into public consciousness, although water-dependent farmers were already aware of it.

However, to the extent there was budget-related news, some of it indirectly involved the drought. The legislature had, years before, put an \$11.1 billion water project bond on the ballot, only to take it off when it appeared unlikely to pass. So Governor Brown negotiated with the legislature on pairing down the cost of the bond plan.

There were two sticking points. The governor's twin tunnel water project plan was controversial; some observers were even reminded of his failed 1982 Peripheral Canal proposal. And there was an ideological division in the legislature over dam construction. Republicans liked dams; Democrats opposed them. The idea of weighing the costs and benefits of particular projects seemed not to be a major element in legislative thinking. As a result, vague language referring to "water storage" facilities rather than dams has come into vogue among California politicians whenever water issues are debated.

Eventually, a water bond accord was reached that was "tunnel-neutral" (no funds specifically earmarked for Brown's tunnels) and that had some funds that could be used for water storage. The governor

²⁴The proponent put over \$5 million into a signature drive for an initiative to divvy up the state but nonetheless failed to obtain sufficient signatures to put it on the ballot. Josh Richman, "'Six Californias' initiative fails to qualify for ballot," *San Jose Mercury-News*, September 12, 2014. Available at http://www.mercurynews.com/california/ci_26522862/six-californias-ballot-initiative-fails-qualify-2016-ballot.

pushed to cut the bond to \$6 billion but eventually he settled for \$7.5 billion. With that agreement, the bond plan became Prop 1 for the fall 2014 ballot.²⁵

Then there was the rainy day fund which became Prop 2. One component of the deal that put Prop 2 on the ballot was a proviso that since the state would be putting money aside for schools (as well as all other state expenditures), school districts would be restricted in putting their own money into local-level rainy day funds. School districts, however, were dubious about how much would be available for them in the event of fiscal “rain” at the state level and wanted to have their own reserves.²⁶ Legislative Republicans proposed relaxing the local limitation but they didn’t have the votes to implement a change.²⁷ (Arguments about possibly relaxing the local reserve limits were still going on a year later in the legislature.)

Legislative Republicans also expressed concern about the cap-and-trade program that acts as a *de facto* tax – but is not technically a tax – on greenhouse gas emissions and emitters. Some of their opposition was based on cap-and-trade’s quasi-tax characteristic. But some of it was based on opposition to the high-speed rail project supported by the governor, which is partly reliant on a portion of the cap-and-trade revenue collected by the state.

Republican gubernatorial candidate Neel Kashkari referred to the rail project as the “crazy train” during his campaign, but the issue never really caught on. During the summer, the Legislative Analyst’s Office (LAO) estimated that an eventual likely impact of the imposition of cap-and-trade would be to raise retail gasoline prices by 13-20 cents per gallon and possibly more. However, the impact would be a phased-in effect, reaching that level by 2020.

In the single TV/radio debate Brown had with Kashkari, Brown defended his rail plan. It’s worth noting that the train plan had actually begun under Governor Schwarzenegger. Brown was gradually also assuming ownership of the state’s environmental reputation – especially with regard to greenhouse gas emissions – that also developed under Schwarzenegger; high-speed rail, too, was something Brown inherited and then adopted – not something he conceived.²⁸ Just as Schwarzenegger at one point had

²⁵The legislative wrangling over the water bond lasted so long into the summer that Prop 1 did not appear in the overall ballot pamphlet sent to voters. A separate item on Prop 1 had to be mailed to them.

²⁶The reserve component for schools was dependent on capital gains receipts of the state which can be very volatile and reflect the ups and downs of the stock market and other financial markets.

²⁷Teachers’ unions favored the local limitation. They believed that otherwise school districts would tuck away funds that could otherwise go into pay and benefits.

²⁸Brown’s wife and chief advisor, Anne Gust Brown, was credited in one report with steering the governor’s interest in the rail proposal. See Vauhini Vara, “Anne Gust Brown is the most powerful first lady in the country

spoken to the United Nations about California's greenhouse gas program, so, too, did Governor Brown in late September 2014. Indeed, Brown went beyond Schwarzenegger; he demanded that Republican candidates for president should state what they would do about global warming, and he participated in a Vatican-sponsored environmental program on the topic. If there were a link between the rail project and Brown's growing climate change interests, it was via the cap-and-trade connection. Ironically, however, a papal document on global warming was critical of cap-and-trade as a solution.²⁹

There were two things that Brown *didn't* do as the summer came to an end and as the November 2014 general election approached. He tended to stay aloof from the campaigns of other Democrats and not actively campaign for them. In the legislature, Democrats, with some luck, might have reached the two-thirds majority level needed to pass tax increases and put propositions on the ballot without Republican support. But with two thirds, legislative Democrats could also override a gubernatorial veto and it was unclear that Brown was anxious for that much power to reside with them.

Brown also pointedly did not repeat his pledge of the 2010 election: the pledge of no new taxes without a vote of the people. Since there was no danger of his losing the 2014 election, there was also no point in tying his own hands with such a promise. When asked about whether he would renew the tax pledge, Brown said that this time around he would be "sticking to 1 and 2," referring to the water bond (Prop 1) and the rainy day fund (Prop 2).³⁰ Thus, the 2010 tax pledge was not renewed as part of Brown's 2014 campaign. (And a year later, the legislature was actively considering tax plans for road maintenance and other purposes.)

While there were issues related to the budget that might have been raised in a more competitive gubernatorial election, the absence of a viable opponent to Brown left such matters to policy wonks and to the few reporters who covered state policy. The legislature and governor, for example, have approved subsidies in one form or another to specific firms, ostensibly to create or retain jobs. High-profile firms, such as Tesla – a manufacturer of expensive electric cars – have been the targets of such awards, sometimes in bidding wars with other states. California has also responded to other states' programs to subsidize film and TV production within their borders by enhancing its own program of film

because she didn't want to be one," *California Sunday Magazine*, June 7, 2015. Available at <https://stories.californiasunday.com/2015-06-07/anne-gust-brown-the-most-powerful-first-lady-in-the-country/>.

²⁹George Skelton, "Pope Francis and Brown part ways on cap and trade," *Los Angeles Times*, July 19, 2015. Available at <http://www.latimes.com/local/politics/la-me-cap-environment-20150720-column.html>.

³⁰Quoted in David Siders, "Jerry Brown mum on tax pledge," Capitol Alert blog of *Sacramento Bee*, September 26, 2014.

tax credits. There was essentially no discussion of the efficacy of such programs in the 2014 election season.

Similarly, during the earlier period of fiscal distress which Brown inherited when he returned to the governorship in 2011, a series of legislative actions and judicial decisions had led to the abolition of local redevelopment agencies. Such agencies were funded in part by property tax diversions that indirectly required the state to backfill the lost local revenue that would otherwise have gone to schools.³¹ The legislature enacted, and the governor signed in September 2014, a partial substitute for redevelopment agencies known as Enhanced Infrastructure Financing Districts (EIFDs). Again, there might have been some discussion of the utility of EIFDs in the campaign, but the topic didn't come up.

The legislature also enacted, and the governor signed, a bill allowing some community colleges to offer four-year degrees. Separation of the roles of the three "segments" of public higher education – community colleges, CSU, and UC – was an integral feature of the Master Plan that Jerry Brown's dad as governor brought to fruition. The old 1960 Master Plan might well have needed review after over half a century. But there was no review in 2014 of the type that led to the Master Plan; just an *ad hoc* legislative decision. And there was no debate over the erosion of the Master Plan as part of the 2014 election. Nor, as will be discussed below, was there any attempt by the governor to create a broad review committee to re-evaluate the Master Plan after the election when a budget dispute with UC erupted.

The Fall: Election and Aftermath

A fourth term will be very different than a first term or a second term, and it will be even different than a third term. Now what will all be, you just, you know, fasten your seat belt. It'll be a very exciting ride.

Governor Jerry Brown speaking to reporters at campaign stop³²

By the time of the fall 2014 election, revenues for the first quarter of the fiscal year were running about half a billion dollars ahead of the official budget forecast. So it would have been difficult to make an issue about the condition of the state budget, even if Kashkari had had the money to make an issue of it.

³¹The technical term is "tax increment financing." Basically, the rise in property tax revenue due to development fostered by the redevelopment agency goes back to that agency to finance borrowing for the project. Under Prop 98's formulas for required K-14 spending, local property taxes are included. So property tax revenue that doesn't go to school districts and community college districts has to be made up by the state. Abolishing redevelopment agencies increased local property tax revenue for K-14, thus saving money for the state.

³²Quoted in David Siders, "Jerry Brown, weary of agenda questions, dares reporter to 'print half of what I say,'" Capitol Alert blog of *Sacramento Bee*, October 29, 2014. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article3456324.html>.

Polls suggested that Democrats would carry all statewide offices. The main uncertainty was over the race for Superintendent of Public Instruction in which an incumbent Democrat was being challenged by another Democrat running on an education reform platform. In the end, that office went to the incumbent.³³ Kashkari wrote a long post-campaign report attributing his defeat to “fatigue” among Republican donors.³⁴ He ended up putting over \$3 million of his own money into his losing campaign.

Apart from Props 1 and 2, there was another proposition approved by voters with budgetary implications. California had been under court supervision due to state prison overcrowding and inadequate health care and under orders to reduce its prison population which it had been doing. Part of the remedy was early release of prisoners considered the least dangerous, a policy that some police agencies felt was causing an uptick in crime. Voters in the 2014 general election approved Prop 47 which reduced certain crimes to misdemeanors, again resulting in a prison population reduction. Housing prisoners is expensive and so indirectly Prop 47 reduced the long-term budgetary cost of corrections, at least at the state level.³⁵ On the other hand, there was a temporary added burden placed on the courts stemming from petitions by prisoners asking to be resentenced under the new rules. The governor’s budget included additional spending for that purpose.

To the extent there was any budgetary drama in the fall of 2014, it came from the University of California Regents almost immediately after Election Day. Up to that point, the regents had relied on the governor for the passage of Prop 30 and for improved state funding after the cuts of the Great Recession. They were disappointed with the added funding they received when the proposition passed and complained that while the state provided for CSU’s pension as part of CalPERS – the giant state pension plan – it eschewed responsibility for UC’s pension costs under the university’s separate plan. But generally, they went along with the governor’s requests for tuition freezes. The governor is an *ex officio* regent and, unlike his predecessor, Brown often attended regents meetings and philosophized about his views on educational matters.

Traditionally, the UC president has been an academic. The regents decided that what was needed in a president was political skill in dealing with Governor Brown and the legislature and so recruited Janet Napolitano, a former governor of Arizona. Before the November 2014 election, Napolitano – with the

³³ Elections for the superintendent of public instruction are nonpartisan.

³⁴ Neel Kashkari, “Lessons from the Trail” (November 5, 2014), p. 6. Available at <https://republicanmillennial.files.wordpress.com/2014/11/neel-kashkari-lessons-from-the-trail.pdf>

³⁵ As with other ballot initiatives, once in place inadvertent consequences of Prop 47 become hard to fix. For example, it was noted that DNA collection from those arrested for felonies is collected, but not for misdemeanors. Did voters mean to exclude certain crimes from DNA collection as opposed to harsh punishment?

support of the regents – evidently came up with a plan to propose a multiyear sequence of annual tuition increases to be unveiled right after the election.³⁶ The state, however, could buy out the tuition increases if it so desired under the proposal. The UC proposal was a direct challenge to Brown; in effect it posed one (former non-California) governor against a current California governor.

Brown moved to fill vacant regent positions with allies but there were only a few vacancies, so there was no prospect of reversing the post-election regental decision. What eventually emerged was a confidential “Committee of Two” (Brown and, or versus, Napolitano) to negotiate a deal. That approach posed a political problem since budget appropriations for UC in the end are enacted by the legislature, not the governor and not the regents. Meanwhile, the trustees of CSU kept their heads down, perhaps because they already had the pension advantage and – more likely – because they saw no gain in confronting the governor when UC was doing it for them. If UC somehow obtained more money from its strategy, CSU might benefit from additional funding, too, without taking a political risk.

The UC budget dispute, which in the end involved only a very small part of the \$115 billion budget eventually adopted for 2015-16 – a small fraction of 1% no matter how you choose to account for it – seemed to provide the main fiscal drama for the state’s news media during the next six months. (Note that what was at stake was just an annual *increment* to the total ongoing UC budget; the total to which the increment would be added was only about 2.6% of the prior year’s budget.) Regents would meet every two months with the two governors present; students would demonstrate against the tuition hikes (which were in fact bargaining chips). The governor’s newly appointed regents and the political *ex officio* regents would be in conflict with most of the others.³⁷ The Committee of Two would negotiate behind closed doors – leading to uninformed speculation as to what was occurring. Legislative leaders felt cut out of the process and were not reticent about letting it be known that they wanted to be players and ultimately would have to be. Indeed, from the get-go, Assembly speaker Toni Atkins declared the UC tuition plan to be “unacceptable.”³⁸

³⁶The plan appeared as an op-ed by Napolitano and the chair of the Board of Regents, Bruce D. Varner, in the *Sacramento Bee* on November 5, 2014, the day after Election Day. See “A better plan to set tuition at UC” available at <http://www.sacbee.com/opinion/op-ed/soapbox/article3585204.html>.

³⁷Apart from the governor and his new appointees, there were negative votes from the student regent and the other *ex officio* regents. Lieutenant Governor Gavin Newsom, one of the *ex officio* regents, was soon to announce that he was running for governor in 2018. Other potential candidates at this writing are former state controller Steve Westly (who tried unsuccessfully for the Democratic nomination for governor in 2006), state treasurer John Chiang, and former Los Angeles mayor Antonio Villaraigosa.

³⁸Her rejection of the plan also appeared as a *Sacramento Bee* op-ed: “There’s a better way than tuition hikes to fund UC,” November 18, 2014. Available at <http://www.sacbee.com/opinion/op-ed/soapbox/article4001542.html>.

Winter: Budget Unveiling

With big and important new programs now launched and the budget carefully balanced, the challenge is to build for the future, not steal from it...

Governor Jerry Brown, 2015 Inaugural Address³⁹

While there is a tradition of leaking word of new proposals that will be contained in the budget as the budget release date approaches, there was little such leakage prior to the January 2015 budget announcement. Indeed, the main announcement from the state Department of Finance – not a leak – was that its latest estimate for California’s population growth was under one percent per annum.⁴⁰ California was no longer growing faster than the rest of the U.S. (and really hadn’t since the end of the Cold War). Its economy, in short, was not pulling in folks from elsewhere as had been the case for much of the state’s history.

There was a reason for the absence of leaks about new programs. What the new budget mainly contained were increments to existing programs, albeit some larger than others. And, as noted above, the drama of UC’s budget tended to pull attention away from other matters. There were continuing issues with defective construction of the Bay Bridge that might have been discussed more fully. There was a (largely ceremonial) “groundbreaking” for the high-speed rail project.⁴¹ The new elements in the budget were dollar totals for various existing programs. Only the UC budget issue had both dollars *and* conflict. And in the UC case, the governor simply wrote the budget on the assumption and contingency of a continued tuition freeze.

Prior to the January budget proposal release, the Legislative Analyst’s Office (LAO) put out reports on technical issues such as the limitation on school district reserves and implementation of the Local Control Funding Formula which is intended to channel school resources to especially needy students. The Bay Delta water supply and the governor’s tunnel plan were also discussed. But these were technical issues and not new ones. The one potential new area discussed by LAO was the possibility of implementing a state-level Earned Income Tax Credit (EITC) that would piggy back on the federal EITC.

³⁹Media release of January 5, 2015 available at <http://www.gov.ca.gov/news.php?id=18828>.

⁴⁰California Department of Finance news release dated December 11, 2014. Available at http://www.dof.ca.gov/research/demographic/reports/estimates/e-2/documents/July2014_package.pdf.

⁴¹A fictional scandal based on the high speed rail was a centerpiece of the 2015 plot of the TV series “True Detective.” And one of the final scenes in the series took place in a transit hub built in Orange County which would become the station for the high speed rail assuming it eventually reaches Orange County. But the series aired during the summer of 2015, well after the state budget was enacted. If there was any confusion between reality and fiction as a result of the series, it came too late to influence the budget.

Under such an EITC, the working poor would receive a tax refund larger than what they paid in state income taxes, a net income subsidy. The EITC idea, however, was not raised in the governor's January proposal although it made a later appearance as part of the May Revise budget.

Generally, however, public concerns about the budget were receding as memories of late budgets and clashes between the governor and legislature faded. A Public Policy Institute of California (PPIC) poll found that 46% of adults thought the budget was a "big problem," down from about seven out of ten adults when Governor Brown started his second iteration back in early 2011.⁴² What exactly the "problem" was for the 46% was unclear. Seventy percent of Republicans thought the budget was still a big problem. But did they think so because they felt taxes were too high or that there was too much spending even though there wasn't an immediate crisis? What we do know is that public perceptions of the budget are highly inaccurate. In the same poll, 42% of adults thought that the biggest state expenditure was on prisons, when only 9% of the budget at that time went to that category. Only 15% thought that K-12 was the biggest category even though K-12 was by far the largest category absorbing 43% of the budget.

Although Governor Brown had explicitly not pledged in 2014 that there would be no new taxes without a vote of the people, proposals for new taxes – although discussed in the legislature – went nowhere during the period of enactment of the 2015-16 budget. Brown had talked about the need for addressing the funding for a backlog of needed road maintenance. But he ultimately deferred any discussion of tax increases to fund such an effort until a special session during summer 2015, *after* the overall 2015-16 budget was enacted.⁴³

There was also talk of extending the Prop 30 temporary income and sales tax increases although the governor seemed reluctant to permit what he originally promoted as temporary to voters to become quasi-permanent. In fact, the 2015-16 year is projected to be the peak of Prop 30 revenue collection if there are no extensions, roughly \$8 billion.⁴⁴ The following fiscal year, the sales tax component will

⁴²Californians and their government, January 2015. Available at http://ppic.org/content/pubs/survey/S_115MBS.pdf.

⁴³The traditional funding mechanism had been the gasoline tax. However, with more fuel-efficient cars – including electric vehicles – the gasoline tax was becoming a less effective user tax. It also was calculated in a cents-per-gallon format so that there was no adjustment for inflation. There was discussion during the summer of other taxes such as a mileage charge. However, a mileage charge would require access to odometers and raised privacy issues as well as administrative concerns and essentially dropped off the agenda.

⁴⁴California Forward, "Financing the Future: How Will California Pay for Tomorrow?" Available at <https://cafwd.app.box.com/s/izluytl2guouf50fbvd57pwet7v98pl>.

expire in midyear. And in 2018-19, the same happens with the larger income tax component (coinciding with the end of Governor Brown's second iteration).

Apart from Prop 30 extensions, there were other ideas floating about such as a "split roll" for local property taxes under which commercial property would be taxed at higher rates than residential. Under state fiscal arrangements, more local property taxes – which in part go to K-14 – tend to reduce the state contribution to K-14 under the formulas of Proposition 98 of 1988. However, Governor Brown has been reluctant to touch Prop 13 of 1978, which determines local property taxes – residential and commercial – and which was enacted by voters overwhelmingly during his first iteration as governor. Although much of the business community opposed Prop 13 in 1978, the tax advantage that has since accrued to business would guarantee a heavily funded campaign against the split roll concept.

With the governor vs. the Regents conflict fully underway, and the Committee of Two (referenced earlier) now formed, UC president Napolitano announced that out-of-state enrollment at the Berkeley and UCLA campuses would be capped. In part this step was aimed at defusing gubernatorial and legislative concerns about access for state residents, and thus an effort to engage public support (or at least less opposition). Oddly, at least one poll suggested the public preferred to have more out-of-state students *if* the full tuition those students paid would prevent in-state tuition from rising.⁴⁵

Meanwhile, the Legislative Analyst's Office – which is neutral/bipartisan when it comes to legislative matters – grumbled about the governor setting priorities for UC via the budget. The LAO is *not* neutral when it comes to whether the governor or the legislature – of which LAO is a part – should set priorities for state programs. However, both the governor and UC president Napolitano gave vague assurances to the regents in March 2015 that their Committee of Two discussions were moving in what the governor termed the "right direction" – without specifying what direction that was.⁴⁶

Beyond the UC tuition controversy, other levels of education were also debated – albeit with less news media attention – once the January budget proposal was presented by the governor. For example, Brown, while substantially increasing the allocation for schools, wanted to end state bond funding of school construction and leave such matters to local districts. But the districts and the legislature weren't

⁴⁵The result was found in the USC/Dornsife/Los Angeles Times poll. See Phil Wilson, "Voters strongly oppose UC tuition hike, poll finds," *Los Angeles Times*, February 28, 2015. Available at <http://www.latimes.com/local/politics/la-me-pol-poll-tuition-20150228-story.html>.

⁴⁶David Siders, "UC budget talks with Janet Napolitano headed in 'right direction,' Jerry Brown says," Capitol Alert blog of *Sacramento Bee*, March 18, 2015. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article15286988.html>.

happy with that idea. And, given California's direct democracy, it's hard to see how petitions for ballot initiatives authorizing and requiring state bond funding of school construction could be prevented.

Meanwhile, there were monthly reports from the state controller indicating that more tax revenue was being collected by the state than had been estimated as part of the 2014-15 budget. Through January, for example, over \$3 billion in extra funds had come in during the first seven months of the fiscal year. Brown's strategy of using "conservative" revenue forecasts for budgeting may hold down spending in the year for which the forecast was made. But the appearance of a surprise extra dose of revenue adds to pressure to increase spending beyond what the governor proposed in the next year. Even a prognosis by LAO that under some scenarios the extra revenue might trigger so much extra funding for K-14 under Prop 98 that other programs could be squeezed, did not dampen the legislative pressure.⁴⁷

Of course, there was potential for more expenditures in a variety of programs such as health care. California had been successful in expanding access to health care as part of the federal Affordable Care Act ("Obamacare"). Part of the expansion occurred in the state's Medi-Cal (Medicaid) program. Low provider reimbursement rates under Medi-Cal led to limitations on access to physicians, many of whom would not accept Medi-Cal. It seemed likely, therefore, that those rates would eventually be raised.

In any event, the legislature turned to hearings on a variety of programs after the January budget proposal was released. Not all legislative concerns were directed to the budget, however. There were hearings on such matters as new "sharing economy" technologies such as Airbnb. (There are local budgetary concerns regarding hotel taxes in that case.) The drought was increasingly impinging on public perceptions and in April 2015 Governor Brown announced a "State of Emergency" to deal with water shortages.⁴⁸ However, the immediate budget implication of water cutbacks was unlikely to be large, and the drought had little impact on the passage of the 2015-16 budget.

The drought had uncertain implications for Brown's twin water tunnel plan which he was cutting back in ways upsetting to environmentalists in order to reduce its costs. Brown advised his environmental critics

⁴⁷California Legislative Analyst's Office, *The 2015-16 Budget: Possible May Revision Scenarios*, April 7, 2015. Available at <http://www.lao.ca.gov/reports/2015/budget/scenarios/may-revision-scenarios-040715.pdf>.

⁴⁸Brown seemed to go out of his way to make statements pleasing to farm interests, at least initially. Agriculture consumes 80% of supplied surface water. In addition, farm pumping from underground sources as other water supplies were reduced has led to notable ground subsidence.

that “until you put a million hours into it, shut up! Because you don’t know what the hell you’re talking about.” One such critic noted that a million hours involved over 100 years.⁴⁹

Spring and the May Revise

*One thing we know is when governors leave town with big deficits, they’re more scorned than praised.
I think it’s all balance.*

Governor Jerry Brown at his May Revise news conference⁵⁰

As the date for the May Revise to be released approached, the state controller continued to report revenues for the 2014-15 year – by that time including the very-important April income tax month – running well over the \$3 billion estimates made when the budget for that year was passed. The LAO estimated that revenues for the next year (2015-16) would be about \$2.5 billion above what the governor was forecasting. But it cautioned that much of that extra revenue, if it emerged, would be eaten up by K-14 under Prop 98.⁵¹ The major headline events were a proposal for a state-level Earned Income Tax Credit (EITC) to supplement the federal version’s program of income supplementation for the “working poor,”⁵² a plan to deal with underfunding of CalSTRS – the state pension plan covering school teachers, expansion of health insurance coverage to certain undocumented persons,⁵³ and the unveiling of the Committee of Two deal reached with UC president Napolitano.

The key features of the last – beyond what had been part of the January budget proposal – were a multiyear sequence of contributions to the UC pension fund in exchange for a pension cap on new hires, a two-year freeze of in-state tuition (but increases in out-of-state tuition, and an understanding that the governor wouldn’t veto any additional money UC might negotiate with the legislature for added

⁴⁹George Skelton, “A million hours and still not shovel-ready,” *Los Angeles Times*, May 10, 2015. Available at <http://www.latimes.com/local/california/la-me-cap-delta-tunnels-20150511-column.html>. The million hours seems to be somebody’s estimates of all the planning time that went into the proposal. It is referenced in a later statement by the Metropolitan Water District of Southern California:

http://www.mwdh2o.com/PDF_NewsRoom/GM_Statement_DeltaEIR.pdf.

⁵⁰John Myers, “Revised California Budget Reinforces Brown’s Manifesto of Moderation,” *KQED News*, May 15, 2015. Available at <http://www.kqed.org/news/2015/05/15/revised-california-budget-reinforces-jerry-brown-manifesto-of-moderation/>.

⁵¹California Legislative Analyst’s Office, *The 2014-15 Budget: Overview of the May Revision*, May 16, 2015. Available at <http://www.lao.ca.gov/reports/2014/budget/may-revision/overview-may-revision-051614.pdf>.

⁵²Although the EITC offers tax refunds in excess of income tax payments for the working poor starting in 2015, it shows up in the budget as lower tax revenue – estimated by the governor as a revenue cost of \$380 million – rather than as added spending.

⁵³A later California Field Poll suggested that public opinion was leaning towards such an expansion. See <http://www.field.com/fieldpollonline/subscribers/Rls2510.pdf>. However, the governor’s proposal was an expansion to undocumented persons who were given temporary legal status by presidential order.

enrollment.⁵⁴ As it turned out, the legislature did not go along with the multiyear deal and allocated only the first year pension contribution with an explicit statement that it was not obligated beyond that amount. It also provided a small enrollment allocation, less than UC had requested, with conditions attached that – at this writing – were not met for 2015-16 enrollments and may not be met the following year.

Under current budget arrangements, enactment of a budget – so long as it doesn't require tax increases – can be done by a simple majority vote in both houses of the legislature. However, if there is no budget by the June 15 deadline, legislators lose a day's pay for each day the budget fails to be enacted.

"Enacted" doesn't mean signed by the governor. The governor could in principle veto the budget. Even if that were to happen, the legislature would have met its constitutional obligation to pass a budget by June 15, and no pay would be lost.

An alternative could be that the legislature would pass a budget and the governor could use his line-item veto to delete elements he didn't want. But the governor doesn't have the power to add things he does want. So there is pressure on the legislature and the governor to come to an understanding and certainly to do so before July 1 when the new budget year begins. In addition, in June 2015, with Democrats in control of both houses and the governor's office, and with a generally expanding revenue "pie" in anyone's forecast, a deal that would produce a budget before July 1 seemed inevitable.

Still, Democrats in the legislature wanted more spending and wanted to assume higher revenues to cover that spending than the governor wanted to accept. Legislators had their constituents to please. The governor needed to maintain his persona as a man who was tight with the dollar. So what emerged was a piece of performance art.

The legislature enacted a budget by the June 15 deadline with more revenue and spending than the governor was willing to accept. Even if the governor wants to exercise a veto, he doesn't have to do it immediately on receipt of the budget from the legislature. So after passing their wish-list budget on time, the legislature then essentially agreed to another scaled-back budget that largely met the governor's terms a day later. The main addition was Medi-Cal coverage for undocumented children.

With the second enactment on June 19, 2015, the scaled-back version superseded the previous version. On June 24, the governor signed the budget making only minor technical line-item vetoes. And all of

⁵⁴Certain graduate professional school tuition increases were to be allowed, although the governor – who holds a law degree from Yale – exempted law students.

these steps were accomplished in time for the July 1 start of the 2015-16 fiscal year. Brown pronounced the new budget as “sound and well thought out.” Assembly Speaker Toni Atkins said that while the new budget wasn’t as good as the wish-list version, it was “the best budget that we have seen in years.”⁵⁵

Unfinished Business

(Legislative leaders) can say, “We tried but gee that governor is tough.” And Jerry Brown comes out looking like the skinflint he loves to look like. It’s a win-win for both.

Political analyst Sherry Bebitch Jeffe⁵⁶

In a sense, budget-making is always unfinished business since the actual path of revenue and spending is an evolving process and since where one budget ends, another begins. However, with the enactment of the 2015-16 budget, the legislature turned to a variety of potential tax matters, as did the direct democracy (initiative) system. Floating around after the budget was passed were proposals for extending the Prop 30 temporary taxes, raising the gasoline tax for road maintenance, some version of a split roll for local property taxes, additional tobacco taxes, an oil extraction tax, and legalization and taxation of marijuana.⁵⁷ There were also issues about reconstituting certain tax elements relating to the health care expansion in the state’s component of the Affordable Care Act. The governor called special sessions to deal with road maintenance funding and the health care tax issue.

At this writing, other matters were also in discussion such as a higher state minimum wage and dealing with the debt incurred to the federal government when California’s unemployment insurance program went into the red as a result of the Great Recession. The fact that the state’s employer cost for workers’ compensation insurance is among the highest for any state is a perennial irritant to the business community and could be addressed at some point.⁵⁸ Public pension issues beyond the governor’s deal with UC and his proposal for CalSTRS remain on the agenda and possibly could be the subject of a ballot

⁵⁵Quotes from David Siders, “Democratic lawmakers largely give in to Jerry Brown on budget,” Capitol Alert blog of *Sacramento Bee*, June 16, 2015. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article24639484.html>.

⁵⁶Quoted in Sharon Bernstein, “California progressives challenge governor’s fiscal caution,” *Reuters*, July 14, 2014. Available at <http://www.reuters.com/article/2015/07/14/us-usa-california-liberals-idUSKCN0PO16X20150714>.

⁵⁷In mid-August 2015, Governor Brown vetoed one tax measure that would have allowed increases in local “transactions” taxes, noting that there were many other proposals for taxes floating around and he was therefore reluctant to approve a particular tax until the tax picture became clearer.

⁵⁸The State of Oregon compiles a tabulation of workers’ compensation costs showing California as the highest cost state in 2014. See http://www.cbs.state.or.us/external/dir/wc_cost/files/report_summary.pdf.

initiative in 2016.⁵⁹ At the same time, the legislature has been taking steps to create a retirement plan for private employees.⁶⁰ And there is the ongoing drought which was triggering an increasingly sharp regulatory response and commanding more and more public attention as the rules trickled down to the individual resident and homeowner. Along with water issues – particularly the governor’s water tunnels – came the threat of a ballot initiative that would require voter approval of major infrastructure projects, including the tunnels.⁶¹

Despite the uncertainty over what the 2015-16 year would bring, shortly after the new fiscal year began revenues on a cash basis came in at well over \$6 billion more than had been forecast a year earlier in the previous (2014-15) budget.⁶² The state controller announced in August 2015 that, for the first time in years, the state would likely have enough internal cash on hand during the 2015-16 years to avoid any external borrowing to cover seasonal needs. The state paid off the last of the 2004 Schwarzenegger Economic Recovery Bonds that he used to deal with the budget crisis inherited from his predecessor.

Nonetheless, a stock market panic in late August 2015 – supposedly sparked by developments in China – served as a reminder that the budget was heavily dependent on financial markets and capital gains taxation. A downturn could trigger a new state budget crisis, despite the sense of plenty that existed after the 2015-16 budget was enacted and despite the rainy day fund. But for the moment, summer 2015 was a quiet time for state fiscal affairs. If these conditions turn out to hold through 2018, Brown will have a very different fiscal legacy at the end of his second iteration as governor than he had left after his first.

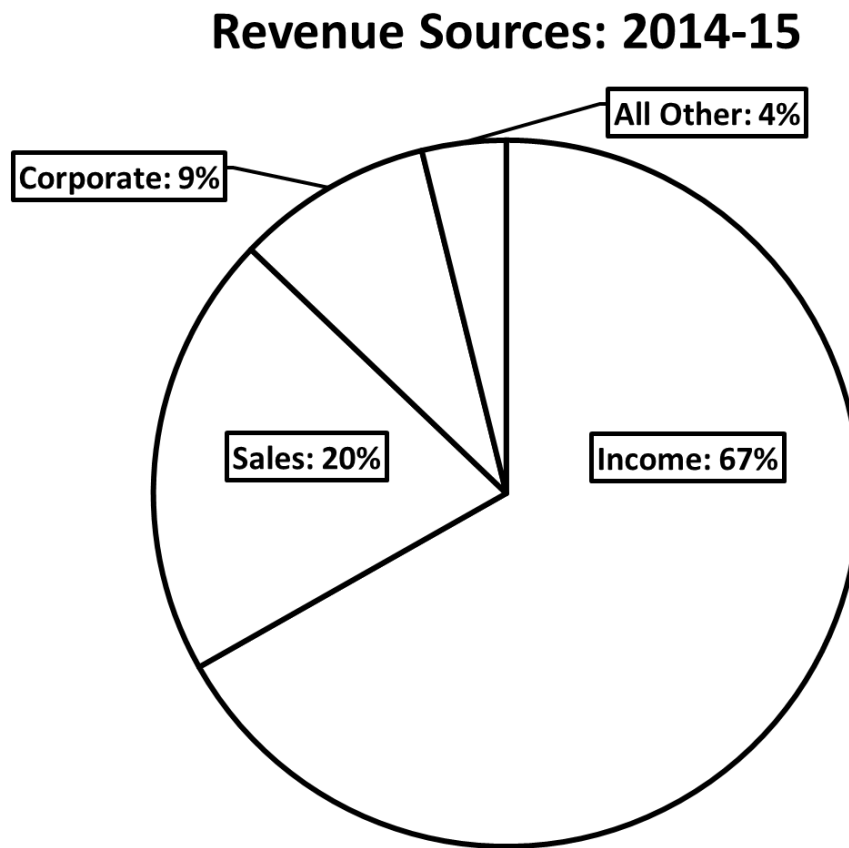
⁵⁹At this writing, proponents of such an initiative seem to lack funding for a signature-gathering campaign and an election campaign should their proposal be placed on the ballot.

⁶⁰The plan would establish a kind of employee saving plan for workers who didn’t have an alternative plan.

⁶¹At this writing, there were reports that the initiative might have enough signatures to qualify for the 2016 ballot. Business interests – notably the California Chamber of Commerce – announced opposition to the measure.

⁶²See Table 2 of this chapter.

Chart 1



Source: Data from California State Controller available at http://www.sco.ca.gov/Files-ARD/CASH/fy1415_July.pdf.

Table 1: General Fund Cash Accounts for Fiscal Years Ending June 30, 2011 to June 30, 2015 (\$ billions)

Fiscal Year Ending June 30	-----Brown-Era Budgets-----				
	2015	2014	2013	2012	2011
Receipts	+\$116.4	+\$104.0	+\$103.4	+\$87.8	+\$95.5
Disbursements	-115.8	-99.6	-96.3	-89.2	-93.8
Surplus/Deficit	+0.6	+4.4	+7.2	-1.4	+1.8
Increase (+) or Decrease (-) in liability*	0.0	-2.4	-7.2	+1.4	-1.8
Reserve**	2.5	+1.9	-	-	-
Reserve+SPEU**	3.0	+3.0	-	-	-
Reserve+SPEU+BSA**	4.6	+3.0	-	-	-
Adjusted Surplus/ Deficit***	+1.6	+5.4	+7.2	-1.4	+1.8

*In the year 2013-14, the \$4.4 billion surplus was used to end the liability of the general fund to other funds and to increase the reserve. In prior years, surpluses reduced the liability and deficits increase the liability, i.e., the reserve closed the fiscal year with a liability still owed.

**Only positive balances are shown. SPEU=Special Fund for Economic Uncertainty. BSA=Budget Stabilization Account ("rainy day" fund). An addition was made to the BSA of \$1.6 billion in 2014-15 which had no balance before. In 2014-15, SPEU's balance dropped from \$1.1 billion to \$0.4 billion. There was no balance in SPEU before 2013-14.

***Consists of the surplus or deficit in the general fund plus the change in the balances in the SPEU and the BSA.

Note: Details need not add to totals due to rounding.

Source: California State Controller, June cash statements. Available at http://www.sco.ca.gov/ard_state_cash.html.

Table 2: General Fund Revenue vs. Estimated Revenue at Budget Enactment, Cash Accounts (\$ billions)

Fiscal Year Ending	-----Brown-Era Budgets-----				
June 30	2015	2014	2013	2012	2011

Total Revenue					
Actual	\$114.2	\$101.6	\$100.1	\$83.5	\$93.2
Estimated	107.4	96.3	96.7	88.4	91.7
Difference	+6.8	+5.2	+3.4	-4.9	+1.5
Income Tax					
Actual	76.3	66.2	67.3	50.7	50.4
Estimated	70.4	60.8	62.8	50.7	46.9
Difference	+5.8	+5.4	+4.5	0.0	+3.5
Sales Tax					
Actual	23.2	22.2	20.1	19.4	27.1
Estimated	23.6	22.7	20.4	19.6	27.1
Difference	-0.4	-0.6	-0.3	-0.2	0.0
Corporate Tax					
Actual	10.3	8.5	7.6	8.1	9.8
Estimated	8.6	8.1	8.4	9.2	10.5
Difference	+1.6	+0.4	-0.8	-1.2	-0.7
Unallocated	-	-	-	-4.0	-

Note: Details need not add to totals due to rounding. Revenue includes only tax, fee, and miscellaneous sources and thus differs from receipts by “non-revenue” transfers from other funds to the general fund. “Unallocated” refers to the assumption of an extra \$4 billion in receipts estimated in 2011-12 for which a specific tax or other source was not specified. See text for details.

Source: California State Controller, June cash statements. Available at http://www.sco.ca.gov/ard_state_cash.html.

Table 3: General Fund Disbursements vs. Estimated Disbursements at Budget Enactment, Cash Accounts (\$ billions)

Fiscal Year Ending June 30	-----Brown-Era Budgets-----				
	2015	2014	2013	2012	2011

Total Disbursements					
Actual	\$115.8	\$99.6	\$96.3	\$89.2	\$93.8
Estimated	116.7	99.4	95.2	89.3	90.5
Difference	-0.9	+0.2	+1.1	-0.1	+3.3

Source: California State Controller, June cash statements. Available at http://www.sco.ca.gov/ard_state_cash.html.

Table 4: Progression of the FY 2015-16 Budget, Accrual Basis (\$ billions)

	LAO Outlook Nov. 2014	Governor's Initial Jan. 2015	Governor's Revision May 2015	Enacted Budget June 2015
Starting reserve including BSA*	+\$2.4	+2.1	+\$4.0	+\$4.0
Revenue & Transfers including addition to BSA*	+113.4	+114.6	+116.9	+116.9
Expenditures	-110.6	-113.3	-115.3	-115.4
Surplus/ Deficit including addition to BSA*	+2.7	+1.3	+1.6	+1.5
Ending reserve including BSA*	+5.2	+3.4	+5.5	+5.5

*BSA = Budget Stabilization Account. The BSA began the fiscal year 2015-16 above with \$1.6 billion contributed in the prior year. Contributions forecast for the BSA for 2015-16 in the columns above, moving left to right, were \$2.0 billion, \$1.2 billion, \$1.9 billion, and \$1.9 billion.

Note: Details need not sum to totals due to rounding. Reserves shown include BSA, "encumbrance" of \$971 million (\$955 million for November 2014 estimates), and SPEU (Special Fund for Economic Uncertainty). The Legislative Analyst's Office removes the encumbrance in its estimates.

Source: California Legislative Analyst's Office data available at

<http://www.lao.ca.gov/reports/2014/budget/fiscal-outlook/fiscal-outlook-111914.pdf> (November 2014); <http://www.lao.ca.gov/reports/2015/budget/overview/budget-overview-2015.pdf> (January 2015); <http://www.lao.ca.gov/Recommendations/Details/845> (May 2015); and <http://www.lao.ca.gov/Publications/Report/3279> (June 2015). Reserve data differ from Legislative Analyst's Office's tables as per the note above.

CHAPTER 7

Reforming Proposition 13 to Tax Land More and Buildings Less

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*“Ask an economist about which are the most efficient kinds of taxes,
and property taxes will be high up on the list.”*

The Economist (June 27, 2013)

A central feature of Proposition 13, the historic property tax limitation initiative approved by California voters in June 1978, is the provision setting property tax assessments at the owner’s purchase price rather than its market value. Among other things, this “acquisition value” rule ensures that, in a rising real estate market, longtime owners will benefit from lower tax burdens relative to recent purchasers. In the wake of Prop 13’s adoption, as policymakers began to focus on the likely long-term distributive effects of this rule, a narrative emerged in public discourse regarding a possible shift in the overall property tax burden from the non-residential segment of the real estate market to residential property owners. In its January 1979 report to the legislature, the Task Force on Property Tax Administration expressed concern that “commercial and industrial property has historically changed ownership much less frequently than has residential property.”¹ The Task Force observed that this differential in turnover rates, in combination with Prop 13’s new acquisition value rule, “would cause a shift in tax burden to residential taxpayers.”²

Over the ensuing decades various commentators have drawn attention to this shift, typically in support of “split roll” proposals for reform. These reforms would bifurcate the property tax base, subjecting commercial and industrial property to periodic market value reassessment while leaving Prop 13’s acquisition value system in place for all residential property. Most recently, the “Make it Fair” campaign—a self-styled “coalition of community, faith-based, civil rights and labor groups”—has proposed a constitutional amendment adopting a split roll, claiming that “many big corporations and wealthy commercial property owners have used [Prop 13] to avoid paying taxes on the actual value of their property.”³ Predictably, opponents

¹Report of the Task Force on Property Tax Administration, Assembly Committee on Revenue and Taxation 57 (January 22, 1979).

²Id.

³See Make It Fair: Close the Corporate Loopholes and Rebuild California, FAQs (available at <http://www.makeitfairca.com/faq/>).

of these reforms have jumped to Prop 13's defense, tagging split roll advocates as an "anti-growth lobby" that uses "scare tactics and us-against-them rhetoric to garner support."⁴

This chapter takes a closer look at Proposition 13, its differential effect on residential and non-residential property, and the possibility of a split roll reform subjecting non-residential property to periodic market-value reassessment. As evidenced by the recent efforts of the "Make it Fair" campaign, much of the public debate over split roll proposals has focused on "fairness" considerations—or whether, as one *Los Angeles Times* headline put it, "it's time to close a big tax loophole for businesses."⁵ My emphasis here is different. Regardless of how one feels about the fairness arguments advanced by split roll advocates, there are compelling reasons rooted in principles of efficient tax design for abandoning Prop 13's acquisition value regime as applied to commercial and industrial property.

From an efficiency perspective, the "loophole" question is beside the point. While it is true that Prop 13's legal framework provides non-residential property owners many opportunities to avoid reassessment (some of which will be examined below), such a loophole-ridden tax system might be tolerable, perhaps even commendable, if it saved us from pernicious economic effects. But Prop 13's loopholes are serving no such function and, if anything, are making property taxes less efficient, more of a drag on economic activity.

Understanding this negative effect requires a closer look at property taxes, both in theory and practice. The property tax is certainly not a perfect tax, but as among the many imperfect options available for funding government, the property tax stands out as one of the least imperfect. That may not sound like a ringing endorsement, but in the realm of tax policy "imperfection minimization" is the name of the game.

One marvel of the property tax is the extent to which it has unified the economics profession. Consider the following perspectives on property taxes offered by two Nobel Prize winning economists, Milton Friedman (1976 Nobel Prize) and William Vickrey (1996 Nobel Prize).

⁴Rex Sinquefield, "Anti-Growth 'Make It Fair' Lobby Pushes for \$9 Billion Tax Increase in California," *Forbes* (September 22, 2015).

⁵Michael Hiltzik, "It's Time to Close a Big Tax Loophole for Businesses," *Los Angeles Times* (July 13, 2009) (available at <http://articles.latimes.com/2009/jul/13/business/fi-hiltzik13>).

Friedman, the strongly pro-market author of the libertarian treatise *Capitalism and Freedom*,⁶ once noted that “the property tax is one of the least bad taxes, because it’s levied on something that cannot be produced—that part that is levied on the land.” In a virtually identical assessment, Vickrey—“a Quaker, a pacifist, and a moral economist”⁷ whose Ph.D. dissertation was titled “Agenda for Progressive Taxation”—opined that “the property tax is, economically speaking, a combination of one of the worst taxes—the part that is assessed on real estate improvements...and one of the best taxes—the tax on land or site value.”⁸

These two passages reveal something very important about the property tax. What makes this age-old levy attractive from an efficiency perspective—rendering it arguably the most efficient tax available—is the fact that a large portion of the tax base consists of land. Unlike every other real-world tax base, including the most common ones like income and consumption, land is fixed in supply. This basic feature of the earth beneath our feet is what makes the property tax less distortionary (and more pro-growth) as compared to other taxes.

Unfortunately, as we will see, one particularly deleterious effect of Prop 13’s acquisition value rule has been to encourage the under-taxation of land relative to structures. Put differently, not only does the legal machinery of Prop 13 favor non-residential property owners over homeowners, but within the category of non-residential (i.e., commercial-industrial) property, it also favors land over structures. This observation leads to the important insight that any reform assessing non-residential property at market value would be, in large measure, a tax on post-1975 appreciation in land values. One recent study estimates that *two-thirds* of the revenue gain from adopting a split roll would come from taxing land.⁹ As economist Steve Sheffrin put it, the effects of a split roll would be “very close to the economist’s ideal of non-distorting taxes.”¹⁰

⁶Milton Friedman, *Capitalism and Freedom*. Chicago: University of Chicago Press (1962).

⁷David C. Colander, Richard P.F. Holt, David A. Kennett, and J. Barkley Rosser, Jr. “William Vickrey’s Legacy: Innovative Policies for Social Concerns,” 24 *Eastern Economic Journal* (1): 1-6 (1998).

⁸William Vickrey, Simplification, Progression, and a Level Playing Field, in *Land Value Taxation: The Equitable and Efficient Source of Public Finance* 17 (Kenneth C. Wenzer ed.) (1999).

⁹Jennifer Ito, Justin Scoggins, and Manuel Pastor, *Getting Real About Reform: Estimating Revenue Gains from Changes to California’s System of Assessing Commercial Real Estate* 7 (May 2015).

¹⁰Steven M. Sheffrin, *Economic Aspects of a Split-Roll Property Tax* (February 2009).

In this chapter, I will show how the basic mechanics of Prop 13's acquisition value rule help explain this result. At the most superficial level, these provisions apply to all real property, both residential and non-residential. The same rules that determine the taxes owed by the Pacoima homeowner apply as well to the Apple Campus in Cupertino. But equal treatment *de jure* does not mean equality of outcomes.

Part I below identifies three common features of commercial/industrial real estate ownership that work to ensure *de facto* preferential treatment for nonresidential property. These features, in combination with Prop 13's new construction provisions, concentrate the benefits of the acquisition value regime in land used for commercial-industrial purposes. Part II uses two recent Prop 13 court cases—*Ocean Avenue, LLC* and *Dyanlyn Two*—to provide a ground-level snapshot of how owners of commercial-industrial property use Prop 13's "change in ownership" rules to avoid reassessment. In both cases, the tax planning end game was preservation of low base year land values, not tax savings on the structures. Finally, Part III discusses the most recent "split roll" proposal advanced by the Make It Fair coalition, as well as additional reform options that could further enhance the efficiency benefits of transitioning to a split roll regime.

I. Legal Mechanics of Prop 13's Acquisition Value Regime

Prior to the adoption of Proposition 13, California taxed real property at its market value as determined by annual reassessments undertaken by local county assessors. Prop 13 abandoned that approach, instead taxing all real property at its "full cash value." Full cash value is defined in Section 2(a) of the ballot measure as "the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when *purchased, newly constructed, or a change in ownership has occurred* after the 1975 assessment."¹¹

Each of the italicized terms in this definition exhibits some ambiguity, leaving many unanswered questions in the administration of the property tax subsequent to Prop 13's passage. In an effort to address that ambiguity, the legislature adopted implementing

¹¹California Constitution, Article 13A, Section 2(a) (emphasis added).

legislation in 1979 based largely on the findings and recommendations of the Task Force on Property Tax Administration. That legislation, now codified in California's Revenue and Taxation Code, provides detailed guidance on the meaning of the terms "purchased," "newly constructed" and "change in ownership."

Among these provisions, the most straightforward is Section 67, which defines "purchased" or "purchase" as "a change in ownership for consideration." By clarifying that a purchase is simply a particular type of change in ownership (i.e., a change in ownership *for consideration*), this provision leaves us with two mechanisms by which real property may be reassessed to its current market value—i.e., new construction or change in ownership. The statute implementing Prop 13 is structured around these two concepts. It provides detailed rules in Chapter 2 ("Change in Ownership and Purchase") and Chapter 3 ("New Construction") of that portion of the California Revenue and Taxation Code dealing with property taxes.

Sections 60-69.5 of the California tax code contains the key statutory provisions defining "change in ownership" (hereafter CIO). While the operation of the CIO rules is relatively straightforward in the residential setting, there are certain distinctive features of commercial-industrial real estate transactions that both increase the complexity of the CIO rules and expand the range of tax planning opportunities. Three of those differences are highlighted here: (1) ownership by legal entities, (2) long-term leases, including ground leases that bifurcate the ownership of land and structures, and (3) engagement of professional tax advisors to structure the acquisition and disposition of real estate.

A. Ownership by Legal Entities

In the case of the ordinary homeowner, title to the residence is almost always held directly by the individual—either a single individual or multiple individuals (most commonly a married couple). To be sure, home titles are often held in trust for the benefit of the individual owners, but the revocable living trusts ordinarily used for this purpose offer no particular advantages in navigating the CIO provisions. They are normally used for estate-planning purposes and to

avoid probate. Aside from that inconsequential wrinkle, single-family homes are very rarely held by legal entities.¹²

By contrast, it is extremely common for commercial/industrial real estate to be held by various types of legal entities, including partnerships, limited liabilities companies, corporations, etc... Most importantly for our purposes, it is not uncommon to structure the sale of commercial/industrial real estate as a sale of ownership interests in the legal entity. This form of transferring real estate raises a fundamental question that the CIO provisions attempt to address: under what circumstances should the sale of an ownership interest in a legal entity be regarded as a CIO of the real estate owned by that entity?

Following the guidance of the Task Force on Property Tax Administration in 1979, the legislature answered this question with a general rule that laid the groundwork for much of the tax planning undertaken to avoid reassessment. Section 64(a) of the statute provides that “the purchase or transfer of ownership interests in legal entities...shall *not* be deemed to constitute a transfer of the real property of the legal entity.”¹³ The Task Force justified this “separate entity” approach (whereby the separate identity of the entity is respected rather than disregarded) on the basis of administrative convenience. A moment’s reflection reveals that this legislative choice was both reasonable and understandable.

Under the alternative “ultimate control” theory, it would have been necessary to “look through” each legal entity owning real estate to determine when the ownership interests have changed hands. The administrative burdens associated with a pure look through approach would have been significant. It is far simpler to administer a system in which it is the *transfer of real property* that triggers reassessment rather than one in which the transfer of ownership interests could give rise to a CIO.

¹²Among other things, owning a principal residence through a legal entity has the potential of jeopardizing the availability of certain key federal income tax benefits, such as the home mortgage interest deduction and the exclusion of gain from the sale of a principal residence. That said, wealthy individuals sometimes hold title to their homes through a limited liability company for privacy purposes. An October 2012 Wall Street Journal article notes that LLCs are sometimes used by “starlets, tycoons, sports stars and other high-end home buyers.” The article notes that this practice is most prevalent in the case of extremely expensive homes, noting that 27 percent of homes sold for more than \$5 million were held by “an LLC or trust.” See Alyssa Abkowitz, “Psst. Wanna Buy a House?,” *Wall Street Journal* (October 25, 2012).

¹³California Revenue and Taxation Code, Section 64(a) (emphasis added).

But the story does not end there. Administrative considerations may have made reliance on the separate entity approach both reasonable and understandable. However, that legislative choice also carried with it potentially significant disadvantages in terms of enabling tax avoidance. Without additional rules, the separate entity principle embodied in section 64(a) would permit taxpayers to avoid a CIO through the simple expediency of holding real estate in a legal entity and selling ownership interests in that entity rather than selling the real estate itself.

To limit these tax avoidance techniques, the statute includes certain exceptions to the Section 64(a) provision. In a nutshell, these exceptions are meant to ensure that real estate will be reassessed in those situations where it is most obvious that a change in ownership of the legal entity has occurred. The most important of these provisions for our purposes is section 64(c), which specifies that the acquisition of “control” of a legal entity (defined as more than 50 percent of the voting stock of a corporation or a majority interest in a partnership, LLC or other legal entity) will trigger a CIO of the real property owned by the legal entity.

Insofar as this rule is meant to identify situations where the ownership of a legal entity has changed, it has some very significant shortcomings. Among other things, it is possible for a legal entity to experience a change of ownership without any one person or entity acquiring control of that entity. In addition, formalistic conceptions of ownership (e.g., ignoring the common interests of related parties) render this already inadequate rule even more susceptible to rudimentary tax planning techniques.

Unfortunately, these two provisions—i.e., sections 64(a) and 64(c)—represent an awkward and uneasy compromise between the separate entity and ultimate control approaches for determining changes in ownership. As we will see, this statutory framework has spawned considerable administrative and legal complexity and yet still leaves considerable latitude for taxpayers to avoid reassessment in situations that, by any reasonable estimation, seem to involve a *de facto* (if not *de jure*) change in ownership. And as noted above, because legal entities are used in the commercial-industrial setting, but not ordinarily in the context of the single-family residence, the tax avoidance opportunities are skewed in favor of nonresidential property owners.

B. Long-Term Leases and the Bifurcation of Ownership of Structures and Land

A second distinctive feature of commercial-industrial property is the common reliance on long-term leases, particularly ground leases that bifurcate the ownership of structures and land. The ordinary homeowner almost always holds title to both the house and the land on which it sits. It follows that the sale of a single family residence almost always involves the simultaneous transfer of the house and the land, triggering a reassessment of both components for purposes of Prop 13. Owning the homes but leasing the land is not unheard of in the residential setting (for example, universities sometimes use this structure as a means of providing more affordable housing options for faculty), but it is not common.

By contrast, the land lease, also known as a ground lease, is very common in the commercial/industrial setting. This bifurcation of ownership of the land and the structure raises several questions related to the operation of the CIO provisions. Most importantly, in situations involving long-term leases, questions arise whether the establishment of the lease will trigger a CIO (and if so, what lease term will trigger a CIO), whether the sale of land encumbered by a ground lease will trigger a CIO, what effect the termination or extension of a lease will have on the determination of whether a CIO has occurred.

Once again, the statutory framework adopted by the legislature follows the recommendations of the Prop 13 Task Force. Section 61(c)(1)(A) of the statute specifies that a change in ownership includes the “creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options).” The statute further notes that the following transactions will also be regarded as a CIO: (1) the termination of a lease with an original term of 35 years or more, (2) any transfer of a leasehold interest having a remaining term of 35 years or more, and (3) any transfer of a lessor’s interest in real property subject to a lease with a remaining term (including renewal options) of less than 35 years. An important corollary of these rules, as we will see later, is that a CIO does *not* include the transfer of a lessor’s interest in real property subject to a lease with a remaining term of 35 years or more.¹⁴

¹⁴California Revenue and Taxation Code, Section 62(g).

These rules exhibit a certain internal logic and can be defended as a reasonable effort to identify a single beneficial owner of taxable real property subject to a lease. The primary benefit of such a rule is administrative simplicity. But, as is often the case in the design of tax rules, administrative simplicity comes at the cost of a rigid formalism that subjects the rule to avoidance opportunities.

The specification of a bright-line 35 year term for determining when a lease is considered to trigger a CIO naturally encourages arrangements that come up to but do not quite cross the line (e.g., leases with a term of 34 years and 11 months). For example, a 1999 BOE Advisory Opinion concludes that a lease with a term of 34 years, 11 months and 29 days will not result in a CIO, even if the lease contains renewal options permitting the lessee to extend the term of the lease to more than 35 years, provided that the renewal options are conditioned on factors beyond the lessee's control.¹⁵ In addition, the ancillary provisions are, like all formalistic rules, subject to taxpayer manipulation. For example, lease extensions can be timed to ensure that new lease terms are more or less than 35 years, depending on whether the parties wish to avoid or trigger a CIO.

The operation of these rules will be illustrated below through a close examination of a recent case out of Orange County involving a shopping center subject to a 60-year ground lease. But for now a more basic point deserves emphasis. Long-term leases, especially those involving the bifurcated ownership of land and structures, unsettle the very concept of "ownership" by slicing and dicing the attributes of the concept and dividing them up among different parties.

Every first year law student learns that property ownership is best understood as a "bundle of rights" consisting of various component rights such as the right to possess, the right to exclude, the right to convey, etc. Because long-term leases obfuscate the "true owner" of the property, they necessarily complicate judgments about changes in ownership. The resulting ambiguity provides fertile ground for tax planners aiming to navigate the CIO provisions strategically for the benefit of their clients.

¹⁵See BOE Advisory Opinion (February 18, 1999) (https://www.boe.ca.gov/proptaxes/pdf/220_0350.pdf).

C. Engagement of Professional Tax Planning

A third feature of commercial-industrial property that distinguishes it from residential property concerns the involvement of tax professionals to assist the owner in the transfer of property without triggering a change in ownership for property tax purposes. Of course, it is not unheard of for ordinary homeowners to engage a tax professional to evaluate the property tax consequences of selling or buying a home. For example, it would not be unusual for parents transferring ownership in a principal residence to their children to hire a tax lawyer or accountant to ensure that the transfer satisfies the constitutional and statutory provisions allowing for a parent-child exclusion from the usual change in ownership rules.

There are at least two factors, however, that make engagement of tax professionals more likely in the commercial-industrial setting. First, in the case of commercial-industrial property the opportunity for tax savings by engaging tax professionals is likely to be much greater. The opportunity is partly due to the value of the property being transferred and partly due to the wider latitude in the commercial-industrial setting to structure transactions so as to minimize taxes.¹⁶ Second, as discussed above, commercial-industrial real estate transactions feature greater legal complexity than the sale of a home. Any transaction involving the sale of interests in LLCs, LLPs, or stock in a corporation is much more likely to involve professional tax advisors than one involving a single-family residential home.

To be clear, there is nothing inappropriate about this sort of tax planning. Tax avoidance behavior is as old as taxation itself. One need only consult the English experience with the 17th - century “windows tax”—which prompted property owners to brick up their windows to lower their taxes—to appreciate that the tax minimization instinct runs deep in the human experience. Nor should tax planning be regarded as immoral or unethical. As Judge Learned Hand once famously opined,

“Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even

¹⁶In Los Angeles County, for example, the average assessed value of the county’s 248,655 commercial-industrial parcels is \$1,491,625 per parcel, as compared to \$390,046 per parcel for single-family residential.

a patriotic duty to increase one's taxes. Over and over again the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands.”¹⁷

But just because a taxpayer may morally and legally arrange her affairs so that her tax bill is as low as possible, it does not follow that a tax system should be designed to maximize the taxpayer's ability to do so. Significant investment in tax planning is almost always a symptom of some fundamental underlying defect in the tax system. Those defects should be rooted out and eliminated. Efforts to devise complicated structures to avoid taxes are, as one federal judge recently noted, a “waste of human potential.”¹⁸

For purposes of the present analysis, the relevant point is that the incentives and opportunities for effective tax planning tend to be greater for owners of commercial/industrial property. Unlike the plain vanilla home purchase, commercial/industrial real estate transactions entail large-scale, long-term investments, employing complex ownership structures devised by sophisticated tax planners. An efficient tax system seeks to minimize the influence of tax considerations on private economic decision-making.

D. A Note on “New Construction”

One final point deserves mention. I have described the three factors above to show how certain distinctive features of commercial-industrial property ownership confer *de facto* preferential treatment on this class of property in an acquisition value regime. But there is an important exception to this preferential treatment, one area where commercial-industrial property owners are subject to the worst possible property tax treatment: new construction. No legal structure, leasing arrangement, or tax planning techniques will enable an owner of commercial-industrial property to avoid having that property assessed at its full fair market value. Unlike

¹⁷Gregory v. Helvering, 69 F.2d 809, 810 (1934). An earlier version of the same idea comes from Lord Macnaghten, who wrote, “No-one may act in contravention of the law. But no-one is bound to have his property at the mercy of the revenue authorities if he can legally escape their grasp.” Commissioner of Stamp Duties v Byrne (1911) AC 386 at 392.

¹⁸Salem Financial, Inc. v. United States, Court of Federal Claims (September 20, 2013).

land, structures are eventually torn down, upgraded, rebuilt—i.e., some physical reconfiguration that constitutes “new construction” within the meaning of Chapter 3 of the tax code’s property tax rules. The basic reality of structures that deteriorate (or, alternatively, lose their functionality or architectural style) ensures that those structures will, from time to time, be subject to reassessment under Prop 13’s “new construction” provisions.¹⁹ As a result, when it comes to structures, there is a natural limit on the extent to which property owners can benefit from Prop 13’s acquisition value rule. The owner of a shopping mall, for example, will be able to maintain a low base year value for the underlying land far more easily than for the mall structure itself, which will eventually be redesigned or replaced. Over time, therefore, we should expect the assessment of structures to be closer to market value than land, which is more likely to be assessed at historic cost, increased by the inflation factor as permitted by Proposition 13.

In other words, Prop 13’s legal mechanics ensure that California’s property tax burden will, over time, fall more on the productive investment in structures and less on rising land values, increasing our reliance on the worst part of the property tax and reducing our reliance on the best part. We can see this basic dynamic at play in a pair of recent legal controversies regarding the operation of Prop 13’s change in ownership rules. One of these cases is *Ocean Avenue LLC* out of Los Angeles County; the other is *Dyanlyn Two* in Orange County.

II. Prop 13 in Operation: *Ocean Avenue* and *Dyanlyn Two*

Ocean Avenue LLC v. Los Angeles County Assessor: The Ocean Avenue litigation concerned the acquisition of the Fairmont Miramar Hotel in Santa Monica by businessman Michael Dell (of Dell Computers) in 2006. The property tax controversy arising from the structure employed to acquire the hotel has been highlighted in news stories around the state. It has become

¹⁹ These provisions also apply to land, but they are far less relevant for obvious reasons. Under the Board of Equalization’s rules, land is reassessed under the new construction provision only upon a “substantial physical alteration which constitutes a major rehabilitation of the land or results in a change in the way the property is used.” Rule 463(b)(2). Common examples involving “newly constructed” land include “site development of rural land for the purpose of establishing a residential subdivision” or “preparing a vacant lot for uses as a parking facility.” Even then, only the value of the alteration is added to the base year value of the land. Any increase in the market value of the land between the time of its acquisition and the later alteration is not included in the overall assessed value for tax purposes.

something of a flashpoint in the ongoing debates about how (or whether) to reform Proposition 13 and/or the CIO statutory provisions discussed above. Reactions to the controversy have exhibited the same polarization observed in most debates about Prop 13. Some news outlets labeled Dell the “poster boy for a Proposition 13 tweak” while others claimed that the “Prop 13 tax loophole story is an Urban Myth.”²⁰

In 1999, the Fairmont Miramar Hotel was acquired by Ocean Avenue LLC, which was wholly owned by the limited partnership, Hotel Equity Fund VII, L.P. In July 2006, the Equity Fund entered into a contract to sell the hotel (i.e., the actual real estate and operating business) to 101 Wilshire LLC, an entity owned by Michael Dell.²¹ Apparently recognizing that a sale of the real estate itself would trigger a significant property tax increase based on a standard application of the CIO rules, the parties terminated the July 2006 contract two months later. They arranged instead for a transfer of the Ocean Avenue LLC units rather than the real estate.

From the perspective of the application of the CIO rules, transferring the *LLC units* instead of the real property itself was a critically important change in the structure of the transaction. Recall that Sections 60 *et seq.* of the California Revenue and Tax Code provide detailed rules for determining when the sale of an ownership interest in a legal entity will be regarded as a sale of the real property owned by that entity. More specifically, the statute provides that the sale of an ownership interest “shall not be deemed to constitute a transfer of the real property of the legal entity.”²² However, in an important exception to this taxpayer-friendly rule, the statute also specifies that the legal entity will be deemed to have sold its real property if any one person or entity obtains a majority interest in the legal entity. Accordingly, it was not enough for Dell to simply shift from purchasing the real property to purchasing the LLC units instead. To avoid a reassessment of the property, he would also need to ensure that no person or entity would acquire a greater than 50 percent interest in the LLC.

²⁰*Los Angeles Times* (2013); Wayne Lusvardi, Prop 13 Tax Loophole Story an Urban Myth, Fox & Hounds Daily, May 8, 2013 (available at <http://www.foxandhoundsdaily.com/2013/05/prop-13-tax-loophole-story-is-an-urban-myth/>)

²¹The Second Appellate District opinion says only that “the County maintains that 101 Wilshire LLC was formed by MSD Capital LP” (an entity 99% of which is owned by Michael Dell. Other sources note simply that Michael Dell owned 101 Wilshire LLC. See Gregory R. Broege, Christopher J. Matarese, and Richard J. Ayoob, “What Determines Change in Ownership of Real Property in California?,” 37 *Los Angeles Lawyer* 14-17 (February 2015) (available at <http://www.lacba.org/Files/LAL/Vol37No11/3255.pdf>)

²²California Revenue and Taxation Code, Section 64(a).

To accomplish this outcome, the parties executed a new contract under which the Equity Fund would sell its Ocean Avenue LLC units to three separate entities in the following percentages: (1) a 49 percent interest to the Susan Lieberman Dell Separate Property Trust, (2) a 42.5 percent interest to MSD Portfolio, L.P., and (3) an 8.5 percent interest to Miramar Hotel Investor, LLC. Michael Dell himself owned (directly and indirectly) 99.9 percent of MSD Portfolio, resulting in a 42.49575 percent interest owned by Dell via MSD Portfolio. Dell's ownership interest in Hotel Investor LLC is more complicated because that entity is owned by four other LLCs (Kingfish, Blue Fin, Michelangelo, and 645 Investments). Dell owned (indirectly, through yet another entity, MSD Capital) a 33.3 percent profits interest and a 93.3 percent capital interest in Blue Fin and Michelangelo.

At this point it's worth pausing for a moment from the narrative of how the parties structured this transaction to take note of the legal complexity involved in making determinations of ownership. The Dell Miramar transaction illustrates that "ownership" is often a slippery and elusive concept. It is not enough to simply ask, "Was the property sold?" After all, in a technical legal sense the Miramar Hotel was not in fact sold—it was owned before and after by the same legal entity, Ocean Avenue LLC. Should we nevertheless deem the underlying real estate to be sold, even though it literally did not change hands, just because ownership of the legal entity itself changed? As we have seen, answering that question requires sorting through many legal technicalities, including "multiply-through" calculations of indirect ownership and reference to different forms of entity ownership (e.g., profits interest vs. capital interest).

Returning to the Dell/Miramar transaction, it should be clear that a "change in ownership"—as that term is defined in the statute—did not occur. As the Appellate Court noted, even if we assume that Michael Dell owned 100 percent of Blue Fin and Michelangelo, his total direct and indirect ownership interest in Ocean Avenue LLC would be 48.70625 percent. Accordingly, no single person or entity acquired a majority interest in Ocean Avenue LLC. Dell acquired a (maximum) 48.70625 percent interest, his wife acquired a 49 percent interest, and other unrelated entities acquired the remained. Under the plain terms of the statute, no change in ownership occurred.

One of the reasons the Dell/Miramar transaction has sparked so much controversy is that the outcome seems intuitively wrong. After all, the original owners are no longer in the picture—and a new group has taken control of the property (or at least the LLC that owns the property). Shouldn't the law produce a result more consonant with ordinary intuitions about whether a change in ownership has occurred? One could imagine a number of statutory "fixes" to produce that result.

For example, the CIO rules could be amended to include ownership attribution rules similar to those applicable in determining ownership for federal income tax purposes. In that setting, one spouse's ownership is often attributed to the other spouse to avoid outcomes like that of the *Ocean Avenue* case. Alternatively, the statute could be amended to eliminate the requirement that one person or entity acquire a majority interest in the entity.

While there is something to be said for these statutory reforms, they would likely represent only marginal improvements to the operation of Prop 13 in situations such as *Ocean Avenue*. Sophisticated tax planners typically respond to legislative efforts to "close loopholes" by devising new techniques to circumvent the new restrictions. Moreover, in the case of Prop 13's CIO provisions, any reform broadening the scope of the CIO rules might sometimes make things harder for taxpayers hoping to avoid reassessment, but they would also make it easier for taxpayers wanting to trigger reassessment (e.g., after a decline in value to establish a new lower value base year).

A postscript to the *Ocean Avenue* controversy deserves mention for its relevance to the question of what the taxpayers were hoping to accomplish through the use of the alternative structure described above. In the news reports following the resolution of the case, it was noted that the new owners plan to redevelop the property with \$255 million of new construction. Under the standard Prop 13 rules reviewed above, this new construction would enter the property tax rolls at its fair market value, generating substantial new property tax revenues. What this suggests is that the lion's share of the tax benefit from prevailing in the *Ocean Avenue LLC* tax litigation derives from the preservation of the original 1999 base year valuation of the land.

Assuming the redevelopment project goes forward as planned, the end result from a property tax perspective will be a new structure on the rolls taxed at something close to its fair market value and the underlying land on the rolls at its 1999 value. This result is perhaps the most revealing feature of the *Ocean Avenue* situation. It illustrates the tendency of Prop 13's acquisition value rule to concentrate the nonresidential tax burden on new investment while reducing the tax burden on land.

Dyanlyn Two v. Orange County Tax Assessor: Our second case for illustrating the operation of Proposition 13's "acquisition value" rule on the ground is *Dyanlyn Two v. Orange County*, decided in late January 2015 by the Fourth Appellate District. Whereas *Ocean Avenue* involved the transfer of an interest in a legal entity and thus implicated section 64(c), *Dyanlyn Two* is a case involving a long-term lease—another key device in the CIO tax planning.

The *Dyanlyn Two* case involved two parcels located in Westminster, just to the west of the 405 at the Goldenwest/Bolsa Ave. exit. In 1977, on the eve of Prop 13's enactment, the owners of the land at 15212 and 15300 Goldenwest Street entered into a 60-year ground lease with Golden Westminster Specialty Center. Golden Westminster was a general partnership, whose partners included one individual (John P. Sullivan) and another general partnership, which itself was owned by two other individuals (Diane Kolodziejski and L. Herbert Lundin). The lease included an option whereby the lessee could purchase the property after 25 years (2002) or 30 years (2007). The parties constructed a shopping center at the location and operated it for the next 30 years.

The specific legal question in this case involved the interpretation of two events, both of which transpired in December 2006. First, sometime in early December 2006, the owner of the land and Golden Westminster extended the terms of the ground lease for an additional 15 years, from 2037 to 2052. Prior to this extension the lease had a remaining term of approximately 30 years, but after the extension the lease had a term of 45 years. (As we will see in a moment, the newly extended term of the lease will be important in the resolution of this matter). Second, on December 28, 2006, the landlord sold the land to a group of purchasers that consisted of three parties: (1) a revocable trust for the benefit of Gail & John Sullivan (25%), (2) a limited

partnership known as Sechelt Associates, LP (25%), and (3) a limited partnership known as Dyanlyn Two, LP (50%).

Dyanlyn Two raises this question: Is there a CIO when a landlord sells its interest in real property that is subject to a ground lease? Recall from the discussion above that a property owner who enters into a lease with a term of 35 years or more is deemed to have sold that property to the lessee. Two subsidiary rules flow from this primary rule. First, a landlord's sale of property subject to a lease with a term of 35 years or more is not a change in ownership (since the lessee is considered the owner). Second, a landlord's sale of property subject to a lease with a term less than 35 is a change in ownership.

In *Dyanlyn Two*, the county assessor took the position that the early December 2006 lease extension (from 30 to 45 years) was undertaken for the purpose of enabling the sale of late December 2006 to avoid trigger a change in ownership of the land. The Fourth Appellate District disagreed with this position and found for the taxpayer, holding that because the lease term as of December 28, 2006 (the time of the sale) was technically greater than 35 years, no change in ownership had occurred.

The Fourth District's analysis in *Dyanlyn Two* turned on an Advisory Opinion issued by the Board of Equalization in 2009. Among other things, the BOE Opinion concluded that (1) a CIO does not result when a lease with an original term of 35 years or more drops to below 35 years by virtue of the passage of time, and (2) a CIO does not result from the extension of lease term from below 35 years to a period of 35 years or more. Combining these two scenarios, we have what the BOE Opinion describes as the "over/under/over" situation—*i.e.*, a lease with a term *over* 35 years is created (triggering a CIO), its term drops *under* 35 years by virtue of the passage of time (no CIO), and the lease term is extended to *over* 35 years (no CIO). Per the *Dyanlyn* holding and section 62(g), a sale following a lease extension in the over/under/over situation will not trigger a CIO. By contrast, if the landlord's sale of the property had preceded the lease extension instead of following it, that sale would be treated as a CIO since the lease's term would be less than 35 years.

Dyanlyn is an interesting case in part because the lease extension and the sale were separated by only a couple of weeks, making it seem as though the extension was undertaken for the purpose of enabling a sale of the property without triggering a CIO. As with the *Ocean Avenue* holding, one would be hard pressed to characterize the court's opinion in *Dyanlyn* as "wrong" as a matter of law. An alternative decision applying the step transaction doctrine to collapse the lease extension and subsequent sale might have been equally defensible. But the invocation of such doctrines is almost always a matter of judicial judgment and the court's sense of the degree to which the transaction was structured for tax avoidance purposes. In this case, the taxpayer presented evidence suggesting that the lease extension served other non-tax business purposes, which was enough for the court to decide against invoking the step transaction doctrine.

As with the *Ocean Avenue* case, a postscript to the *Dyanlyn Two* decision provides some interesting context to understand the parties' tax planning end game. The taxpayer's victory resulted in reductions in the assessed value for the land for one parcel from \$4,282,306 to \$797,615 (Parcel No. 142-383-13) and from \$7,032,138 to \$767,083 for a second parcel (Parcel No. 142-401-62). Property tax records for both parcels show an increase of roughly 20 percent in the assessed value for the buildings from 2014-15 to 2015-16, suggesting continual improvements to the structures that assessed at market value. In addition, an online database of construction projects shows a new renovation project for one of the parcels with an estimated value of \$6.1 million, which of course would also be assessed at market value under the standard "new construction" provisions of Prop 13.

In other words, the component of the Golden Westminster Special Center's overall property tax liability that relates to productive economic investment (*i.e.*, new construction and renovation projects) is entering the rolls subject to the highest possible tax burden, based on current market value, while the increased value of the land escapes taxation completely. This result reveals the deep, perverse influence of Prop 13's acquisition value regime in the context of commercial-industrial property. The current legal framework turns the principles of efficient tax design upside down, conferring windfall benefits on land while penalizing new construction.

III. Split Roll Reforms and the Relative Tax Burden on Land and Structures

For nearly as long as Prop 13 has been in operation there have been proposals to reform it. More often than not, these reform proposals—particularly the successful ones—have reduced property taxes further still, typically by expanding the set of transactions that qualify for an exemption from the “change in ownership” rule. To date, Proposition 13 has not been amended in any way that would limit the availability of its benefits. As noted above, several commentators have proposed that Prop 13 be amended to incorporate a split roll, which would subject commercial/industrial property to annual market value reassessment while leaving all residential property (both owner-occupied and residential rental) subject to the traditional acquisition value rule. The most recent split roll reform at this writing was proposed by the “Make It Fair” coalition.

A. The “Make It Fair” Proposed Constitutional Amendment

The “Make It Fair” proposal for reforming Proposition 13 was introduced by State Senators Holly Mitchell and Loni Hancock in June 2015 as State Constitutional Amendment 5 (SCA 5). The legislation, which would need to be approved by voters in order to take effect, would amend the California Constitution by adding a new Section 2.5 to Article XIII A. As of the date of this publication, it appears that the legislature is unlikely to approve SCA 5, but it is possible that its supporters will pursue an initiative measure to put the proposal on the November 2016 ballot.

The key language of SCA 5 is found in Section 2.5(a)(2), which provides that “the ‘full cash value’ of commercial and industrial real property that is not used for commercial agricultural production or is otherwise exempt under the Constitution or statute is the fair market value of that property as of that date.” SCA 5 specifically excludes from this provision all “residential property” which it defines as including “both single-family and multi-unit structures, and the land on which such structures are constructed, that are intended to be used and are used for long-term residential occupancy.” SCA 5 also includes phase-in provisions that are designed to ensure a three-year transition to the new regime covering 2018-2021.

In addition to the foregoing, SCA 5 includes two exemption provisions designed to benefit small businesses. The first, captured in what would become a new section 3.1 of Article III A of the

California Constitution, would exempt from taxation a minimum of \$500,000 of tangible personal property that would otherwise be subject to the state's tangible personal property tax. This tax, sometimes referred as the "Business Equipment Tax," was lambasted in a 2001 report published by the California Taxpayers' Association as "inconsistent, arbitrary, and inefficient."²³ By all accounts, virtually no one seems willing to defend this tax, though it raises approximately \$2 billion in annual revenue, making it difficult to repeal without an offsetting revenue source.²⁴

In May 2015 researchers at USC issued a study estimating the likely revenue effects of SCA 5.²⁵ Following the methodology developed by O'Sullivan, Sexton, and Sheffrin,²⁶ the USC study estimates disparity ratios (*i.e.*, the ratio of market value to assessed value) for commercial-industrial property in each of the state's 58 counties. It then uses these ratios to calculate the revenue gain from a split roll relative to current law.

This process necessarily involves some guesswork. The study relies on several assumptions, such as the likely pattern of future reassessments based on the continued application of current law versus the likely growth in the tax base due to changes in the market value of property. Because of this uncertainty, the study provides a range of possibilities based on different scenarios. In terms of revenue gain for the state as a whole, the estimates range from \$8.2 billion to \$10.2 billion, with a mid-range estimate of \$9.2 billion.

For our purposes, one of the study's most interesting findings relates to how this revenue gain is allocated between land and structures. As noted in the introduction above, the USC study concludes that "land alone accounts for about two thirds of the estimated revenue gain statewide."²⁷ This finding is consistent with earlier research on the likely effects of a split roll,

²³California's Business Equipment Tax: An Inconsistent, Arbitrary and Inefficient Tax (2001) (available at <http://www.caltax.org/documents/2001/BET.Report.08-30-01.pdf>).

²⁴See Rob Wassmer, California's Reliance on Personal Property Taxation: An Economist's View from Sacramento 11 (August 25, 2014) (available at http://www.csus.edu/ppa/about/in_the_community-/2014/WassmerIAAQ2014.pdf).

²⁵Jennifer Ito, Justin Scoggins, and Manuel Pastor, Getting Real About Reform: Estimating Revenue Gains from Changes to California's System of Assessing Commercial Real Estate (May 2015).

²⁶Arthur O'Sullivan, Terri Sexton, and Steve Sheffrin, Property Taxes and Tax Revolts: The Legacy of Proposition 13 (1995).

²⁷*Id.* at 7.

most notably the work published by O’Sullivan, Sexton, and Sheffrin in their 1995 study. As Sheffrin later explain in his 2009 testimony before the Commission on the Twenty-First Century Economy, “many large commercial and industrial properties sit on land which has not been sold since Proposition 13 was enacted.” Consistent with the discussion above, Sheffrin further notes that while “many of the structures on this land are typically taxed closer to market value... the land itself is substantially under-assessed.”²⁸

These consistent findings from two studies undertaken 20 years apart confirm that an important feature of Proposition 13, at least in the context of commercial-industrial property, is the persistent under-taxation of land relative to structures. It follows that elimination of Prop 13’s acquisition value rule for commercial-industrial property would shift the relative tax burden from structures to land, bringing California’s property tax more into line with the precepts of efficient tax design discussed at the outset of this chapter. Put differently, on efficiency grounds alone—*i.e.*, setting aside the “fairness” question—there is ample reason to believe that adoption of a split roll reform would be preferable to current law.

B. Split Rate, Split Roll: Taxing Land More and Buildings Less

The analysis above has assumed that the split roll reform would involve no changes to the property tax *rate*; rather, the only change would be to reform the base of the tax by assessing commercial-industrial property at market value. Under current California law as embodied in Article XIII A, the maximum property tax rate is one percent (plus additional amounts, typically about one-tenth of one percent, for voter-approved indebtedness). Alternative reforms might involve changing the rate in addition to the base, especially if those reforms are targeted at exploiting the distinction between the portion of the property tax that applies to land versus the portion applicable to structures. Under a “dual rate” split roll regime, a separate *lower* rate would apply to structures, while the conventional one percent rate (or perhaps a higher rate) would apply to land. For example, one might imagine a rate of 1.25 percent that applies to land and a rate of 0.75 percent that applies to structures.

²⁸Steven M. Sheffrin, *Economic Aspects of a Split-Roll Property Tax* (February 2009).

Such an approach is sometimes called a “split-rate” or “graded” property tax. The intuition underlying a split-rate property tax derives from the very different economic effects of taxing land versus structures. Because land is fixed in supply, owners cannot avoid the tax by changing their behavior. The opposite is true for the tax on structures, which can be reduced by avoiding new construction or underinvesting in improvements. The idea behind a split-rate property tax is to impose a higher rate on that portion of the base that is less responsive to the imposition of a tax and a lower rate on that portion of the base that is more responsive. The idea is a variation of the “inverse elasticity rule” (also known as the Ramsey Rule), which posits that commodity tax rates should be inversely proportional to the elasticity of demand for each commodity.

A handful of jurisdictions have relied on split-rate property taxes, most notably the City of Pittsburgh, which at one time taxed land at six times the rate that applied to structures. During the 1980s, Pittsburgh experienced a building boom; thus, researchers became interested in determining the extent to which the construction activity could be explained by the city’s unique property tax regime. A 1997 study of the Pittsburgh experience undertaken by Wallace Oates and Robert Schwab found that the split-rate approach enabled the city to generate substantial revenue throughout the 1980s without discouraging new building activity.²⁹ The authors’ essential conclusion was that “land value taxation provides city officials with a tax instrument that generates revenues but has no damaging side effects on the urban economy.”³⁰

The same cannot be said, of course, for alternative revenue sources—such as a tax on structures or a wage tax. The question, therefore, is one of neutrality. While Oates and Schwab could not conclude that the Pittsburgh’s building boom was attributable to its unique split-rate property tax, both economic theory and evidence suggest that alternative tax regimes likely would have discouraged economic activity more than the relatively neutral land tax.

²⁹Wallace E. Oates and Robert M. Schwab, *The Impact of Urban Land Taxation: The Pittsburgh Experience*, 50 *National Tax Journal* 1-21 (1997).

³⁰*Id.* at 19.

One of the criticisms often levied against a split-rate property tax regime is that it would require assessors to accurately disentangle the value of the land from the value of the structures on the land. If land and improvements have a combined value of \$1 million and a rate of 1.25 percent is to apply to the land and 0.75 percent to the improvements, it would be necessary to allocate the \$1 million between those two components. This would need to be done not only when the property is acquired, but each year as the combined value increases or declines a new determination must be made as to how the land has fluctuated in value relative to the structure.

California law has long required assessors to value land and improvements separately.³¹ But the application of different tax rates to each component would likely put great pressure on county assessors to make accurate distinctions between the two components. Nevertheless, advancements in valuation technology over the past few decades, including most notably the introduction of computer-assisted mass appraisal (CAMA) techniques, have increased the likelihood of accurate valuation of land and improvements.³²

Significantly, there are alternative methods of accomplishing the results of a split-rate regime without the valuation difficulties just described. This could be done, for example, by exempting from tax for a period of years some fixed percentage of the owner's investment in new construction. Under current law, California assessors are of course already obligated to assess the market value of new construction. Indeed, new construction is one of the two primary ways that real estate enters the assessment roll at market value (the other being change in ownership). The resulting new construction (taxed at one percent of market value) effectively subsidizes landowners (taxed at one percent of historic cost).

One means of correcting this inefficiency would be to assess all commercial-industrial property at its market value, applying a uniform rate to land and structures, but then provide an exemption or abatement from the tax on amounts incurred for new construction for a period of

³¹California Constitution, Article XIII, Section 13 ("Land and improvements shall be separately assessed.").

³²See Robert M. Schwab and Amy Rehder Harris, *An Analysis of the Graded Property Tax in Taxing Simply, Taxing Fairly: District of Columbia Tax Revision Commission* (October 1997) (available at http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_chptg_schwab.pdf).

years.³³ Because this abatement would be available only for new construction, the substantive effect would be to shift the tax burden away from structures and toward a greater reliance on land values. Other jurisdictions, including New York, have adopted similar abatement regimes for new construction and the availability of these precedents could provide useful guidance for building similar reforms into Prop 13.³⁴

C. Local Option Split Roll: Letting Counties Choose

A final reform option worth highlighting relates to the differential effects of a split roll regime in different parts of the state. It is no secret that, like the country as a whole, there is significant geographical variation in the policy preferences of the California electorate. While much of the state is solidly liberal, particularly in the urban coastal regions, many of the inland and rural areas of the state are more conservative.³⁵ In addition, we know from the USC study cited above that there is also substantial geographic variation in the revenue effects of a possible split roll measure. While the revenue gain from a split roll reform could be as much as \$10.2 billion for the state as a whole, approximately 60 percent of that revenue would be derived from 5 of the state's 58 counties: Los Angeles, Orange, San Diego, San Francisco, and Santa Clara.

A "local option split roll"—under which each county would decide for itself, through local referendum, whether to opt in to a split roll regime—would take account of the fiscal and political variation among the state's counties. To the extent that a split roll reform is understood as a means of generating additional revenue for local governments, one might expect those counties with a more pro-government electorate (e.g., San Francisco) to opt into the regime. But a split roll regime might also be attractive to a county whose voters would prefer to reduce other local taxes or perhaps reduce the tax burden on homeowners.

³³ A similar suggestion appears in Arthur O'Sullivan, Terri Sexton, and Steve Sheffrin, *Property Taxes and Tax Revolts: The Legacy of Proposition 13* (1995), where the authors note that "if some fraction of the value of new construction were exempted for a period of time, these assessment problems would be avoided." *Id.* at 143.

³⁴ See, e.g., Industrial and Commercial Abatement Program, New York City, <http://www.nycedc.com/program/industrial-commercial-abatement-program>.

³⁵ Eric McGhee and Daniel Krimm, *California's Political Geography*, Public Policy Institute of California (February 2012).

Of course, some counties' voters would likely prefer the status quo. The point is that a "local option" approach to reforming Proposition 13 would allow local communities to choose a path that suits local fiscal preferences. One of the most significant consequences of Proposition 13 has been to centralize fiscal decision-making authority in Sacramento. A local option split roll would represent a small step in the direction of reversing that trend.

IV. Conclusion

If California's experience with Proposition 13 teaches nothing else, it is that the state's constitution is an exceptionally fluid and ever-changing document. Through the 1978 adoption of the measure itself as well as the numerous amendments thereafter, California voters have shown themselves willing to subvert long-standing practices in favor of new legal regimes they believe more effectively advance the interests of the state as a whole. The operation of Prop 13 acquisition value has largely served its intended function in the residential segment of the real estate market. With regard to commercial and industrial property, however, the acquisition value rule has perverted the California property tax, exempting long-time landowners from tax on windfall gains while disproportionately concentrating the tax burden on new construction.

The adoption of a split roll regime would level the playing field, subjecting land and improvements to the same rule of periodic market value reassessment. Additional reforms—such as SCA 5's \$500,000 exemption from the business equipment tax or a split-rate regime lowering the tax rate on all improvements or new construction—would go one step further in reducing the tax burden on new investment.

CHAPTER 8

Dismantling the Sex Trafficking of Minors Market in Los Angeles County

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This chapter is based on an Applied Public Policy report prepared as part of the MPP program.

In this chapter we focus on dismantling the sex trafficking of minors market in Los Angeles County (LAC) by: 1) altering key conditions of at-risk and trafficked minors, and 2) changing the incentive structure for johns and pimps.¹ Based on expert interviews, a review of relevant literature, an evaluation of Succeeding Through Achievement and Resilience (STAR) Court case files, and comparative analysis of models across the United States and the globe, we recommend measures for Los Angeles County to disrupt the demand and supply sides of sex trafficking and deter vulnerable commercially sexually exploited children (CSEC) from returning to “the life.”²

The federal government views any minor who engages in commercial sex as a sex trafficking victim. California (CA) law only views minors who can prove they are victims of sex trafficking as actual victims. Otherwise, law enforcement in California has the discretion to arrest minors engaged in commercial sex. California law is murky because there are also statutes stating any minor under the age of 18 cannot legally consent to sex with an adult and any adult who engages in sex with a minor is guilty of statutory rape. However, prostitution, or commercial sex, is illegal in California. The result is that state law allows minors engaged in commercial sex to be treated as victims and criminals based on the discretion of law enforcement and the courts.

¹A “john” is an adult “who pays for or trades something of value for sexual acts” with a minor. Glossary of Trafficking Terms.” *Shared Hope International*. N.p., n.d. Web. 2 Sept. 2014.

<http://sharedhope.org/learn/traffickingterms>. A “pimp” is someone who controls a minor through psychological manipulation and/or physical force *Shared Hope International*. N.p., n.d. Web. 2 Sept. 2014. <http://sharedhope.org/learn/traffickingterms>.

²“The life” also known as “the game” refers to “the subculture of prostitution, complete with rules, a hierarchy of authority, and language. Referring to the act of pimping as ‘the game’ gives the illusion that it can be a fun and easy way to make money, when the reality is much harsher. Women and girls will say they’ve been “in the life” if they’ve been involved in prostitution for a while.” “Glossary of Trafficking Terms.” *Shared Hope International*. N.p., n.d. Web. 2 Sept. 2014. <http://sharedhope.org/learn/traffickingterms>.

CA law that considers CSEC victims	CA law that considers CSEC criminals
<p>Any minor under the age of 18 cannot legally consent to sex with an adult</p> <p>Adults who engage in sex with a minor are guilty of statutory rape</p> <p>CA Senate Bill 855: Juvenile courts can deem CSEC dependents rather than delinquents, placing them under the care of the Department of Children and Family Services (DCFS)</p> <p>CA Trafficking Victims Protection Act: Human trafficking is illegal</p> <p>CA Assembly Bill 12, "Abolition of Child Commerce": Increased fines for human traffickers</p> <p>Attorney General's Bureau of Children's Justice: "enforces criminal and civil laws to hold those who prey on children accountable"³</p>	<p>Prostitution, or commercial sex, is illegal, allowing law enforcement to arrest and charge minors for prostitution or solicitation</p>

Through interviewing LAC agency directors from Probation, the Department of Children and Family Services (DCFS), and juvenile courts, we found that over 90% of minors identified as engaging in commercial sex in LAC are sex trafficked, meaning they have a trafficker or pimp bring them into "the life" and cannot easily escape. The Office of LA County Supervisor Mark Ridley Thomas estimates there are 3,000 domestic minors who are victims of commercial sexual exploitation within LAC.⁴ However, this number may be understated because DCFS was

³Harris, Kamala D. "Attorney General Kamala Harris Unveils Bureau of Children's Justice". Office of Attorney General Website. Accessed on Feb. 12, 2015. <http://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-unveils-bureau-childrens-justice>.

⁴"A Haven for Victims of Trafficking." *Los Angeles County Supervisor Mark Ridley Thomas Website*. 5 Feb. 2014. Web. 02 Sept. 2014. <http://ridley-thomas.lacounty.gov/humanservices/index.php/category/human-trafficking/page/2/>.

reported to be receiving two to three new reports of commercial sexual exploitation of children each week at this writing.⁵

Involvement in sex trafficking is a terrible situation for a minor. After enduring a brutal seasoning period, minors are then forced to engage in commercial sex with strangers anywhere from one to 10 times a day. Sex trafficking victims experience complex trauma, Post Traumatic Stress Disorder (PTSD), dissociative disorder, depression, anxiety, suicidal thoughts, eating disorders, substance abuse, and Stockholm Syndrome.⁶ They often have a host of untreated medical conditions such as “continual physical abuse, broken facial, dental and body bones, rape and gang rape, unchecked sexually transmitted illnesses, pregnancy and miscarriages, sterility, other unmet gynecological needs, lack of dental hygiene, tattoos and physical branding, brain damage, substance abuse and addiction.”⁷

Domestic sex trafficking is growing rapidly throughout the United States as traffickers, transnational criminal organizations, and domestic gangs turn to trafficking of humans over drugs because of the disproportionately high returns and low risk of detection. Researcher Iris Yen found that “depending on the demands of the local market and her individual characteristics, a trafficked woman can cost anywhere from \$14,000 to \$40,000. However, the financial return for purchasing her body is unbelievably lucrative: she can earn \$75,000 to \$250,000 or more each year for her pimp.”⁸ Additionally, two San Diego researchers found

⁵Phone interview with Xiomara Flores-Holguin, Office of Board Relations and Commission, Department of Children and Family Services, March 11, 2015.

⁶“Stockholm Syndrome” occurs when sex trafficked victims experience a mixture of fear, love, attachment, and loyalty towards their trafficker. It tends to be an “irrational bond with their victimizers” as a result of the intense grooming and indoctrination period the trafficker forces upon the victim. *Anti-human Trafficking Manual for Criminal Justice Practitioners*. New York: United Nations Office on Drugs and Crime, 2009. UNODC. 2009. Web. http://www.unodc.org/documents/human-trafficking/TIP_module4_Ebook.pdf.

⁷Module 3 Understanding the Impact of CSEC-Handout 3.3 Physical and Psychological Impact of CSEC.” CSEC Community Intervention Training Project .Retrieved from <http://www.kristihouse.org/pdfs/csecmaterials/AllModule3Handouts.pdf>. Heilemann, T., and Santhiverran, J. “How do female adolescents cope and survive the hardships of prostitution? A content analysis of existing literature.” *Journal of Ethnic and Cultural Diversity in Social Work*, 20 (2011): 57–76.

⁸Yen, Iris. “Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand through Educational Programs and Abolitionist Legislation.” *Journal of Criminal Law and Criminology* Vol. 98, No. 2 (Winter 2008), p. 658.

that “85% of pimps/sex trafficking facilitators interviewed were gang involved”.⁹ Given the rapid proliferation of sex trafficking among gangs, it is crucial for LAC to systematically and strategically siphon off demand as well as provide outlets and rehabilitation services for victims.

LAC Supervisors Mark Ridley-Thomas and Don Knabe, and more recently Shelia Kuehl, are champions of ending domestic sex trafficking of minors (DSTM). They have spearheaded awareness campaigns, organized rallies, passed motions, created and funded multiple programs and alliances such as the DSTM County Task Force. On October 20, 2015, the Board of Supervisors unanimously passed a motion to support the “No Such Thing [as child prostitution]” campaign that pushes for the decriminalization of CSEC. The motion also encourages the Sheriff’s Department to not arrest any victim of child sex trafficking.¹⁰ LAC Sheriff Jim McDonnell responded on October 21, 2015 by stating law enforcement should recognize that “children cannot consent to sex”¹¹ and thus are “victims and survivors of rape”,¹² not child prostitutes. While McDonnell’s commitment to reframing language and labels is a significant step forward, a clear law or statute barring law enforcement from arresting CSEC has yet to be established.

Below we examine sex trafficking of minors in LAC as an economic equation of supply and demand. First we explain how LAC is currently responding to the proliferation of sex trafficking.

⁹Carpenter, Ami C. and Jamie Gates, “Measuring the Nature and Extent of Gang Involvement in Sex Trafficking in San Diego.” *National Institute of Justice*. October 2015. <http://www.abolishhumantrafficking.com/executive-summary-of-the-human-trafficking-study/>

¹⁰“Board Declares “No Such Thing” as Child Prostitution.” *Supervisor Kuehl Website*. October 20, 2015. <http://supervisorkuehl.com/board-declares-no-such-thing-as-child-prostitution/>

¹¹“Addressing the Needs and Promoting the Dignity of Child Victims of Sex Trafficking.” *LA County Sheriff’s Website*. October 21, 2015.

http://sheriff.lacounty.gov/wps/portal/lasd!/ut/p/b1/04_Sj7Q0NDQ0sjQ3sNSP0I_KSyzLTE8syczPS8wB8aPM4i0ND_Azc_Z2CjdZnFc0NPJ1DzLzDTAIM_UPMgAoigQosDCAAqMDTzcDT393TLcDY3MjAyZyQ_nD9KLASXCyEmRBQALICrMAAB3A00PfzyM9N1c-NyrH0zDJRBADF2bTS/?1dmy&page=dept.lac.lasd.home.newsroom.detail.hidden&urile=wcm%3apath%3a/lasd+content/lasd+site/home/home+top+stories/addressing+the+needs+and+promoting+the+dignity+of+child+victims+of+sex+trafficking

¹²ibid.

Then we explore options for cutting off the demand side of the johns, and strategies to eliminate the profitability for the traffickers.

Los Angeles County's Response to CSEC

The primary mode of identification of CSEC in LAC is through law enforcement. However, it is challenging for law enforcement as well as teachers, parents, social workers, lawyers, judges, placement staff, probation officers, emergency room workers, friends, and anyone else who comes into contact with CSEC to identify them as such. There is a lack of screening tools available. Victims are unlikely to identify themselves as sex trafficked.¹³ Another challenge of identification is that CSEC are often picked up on other charges such as violation of curfew for minors after 10 PM, shoplifting, truancy, or drug possession.¹⁴ In these situations, law enforcement who are not trained do not identify the victimization of the minors unless they self-disclose.

Law Enforcement Discretion

Law enforcement agents have significant discretion in determining whether to arrest, detain and/or charge minors with prostitution. Police discretion can help to ensure the safety of the minor from their trafficker and from "AWOLing," or running away from placement. However, if the officer does not view CSEC as a victim, the officer may detain the minor. Law enforcement agents are currently in a catch-22 because detaining minors can cause additional trauma. However, they and the courts believe DCFS does not have enough CSEC trained social workers, safe placements that deter CSEC from AWOLing, or CSEC-specific services to offer victims. Probation currently offers the only CSEC-specific reintegration services, even though it requires law enforcement and judges to detain and lock up CSEC so they can receive services. As a

¹³CSEC do not initially identify themselves as victims because of their complicated relationship with their trafficker. They often see their trafficker as their boyfriend or loved one, despite the physical abuse and complex trauma they endured during their seasoning period.

¹⁴In the City of Los Angeles, minors are not allowed to be in public places past 10:00 pm.
http://www.lapdonline.org/juvenile_division/content_basic_view/2011.

result, law enforcement agents do not trust DCFS' capacity to provide the safest environment for CSEC, making collaboration between the two agencies challenging.

Different Pathways for CSEC in LAC

If CSEC are identified, there are different pathways for them in LAC depending upon the actions of the adult who identifies them: 1) arrest and detention, 2) diversion directly to services without arrest, 3) a multi-agency response with wraparound services, or 4) the dropping of charges if services are completed. LAC currently uses a mixture of all four approaches. There are benefits and drawbacks to each, though #3 and #4 seem to be the only policies that adequately address the complicated needs of CSEC.

Arrest and Detain CSEC

Some law enforcement officers view detention as the safest way to keep CSEC away from their traffickers. However, advocates argue that detaining victims is not the proper solution as it further traumatizes CSEC, breeds distrust with law enforcement, and does not provide the proper rehabilitative setting for CSEC to gain independence and leave their trafficker. Advocates also maintain CSEC do not respond to punitive measures the same way non-CSEC, non-traumatized minors would.

Charge and Placement of CSEC

Once a minor is detained, they will be arraigned in court within 48 hours, although this does not always occur according to STAR Court case files. Judges can choose to uphold or reject law enforcement's charges of prostitution against CSEC. Though minors in California cannot legally consent to having sex with adults, law enforcement and judges still do charge minors with prostitution. During arraignment, judges also decide placement and services for CSEC. If a judge, who is not familiar with CSEC victimization, arraigns the minor, the minor's victimization may not be appropriately considered. However, much like law enforcement's catch-22, judges

may not trust DCFS' ability to provide adequate safety and services to CSEC.¹⁵ As a result, judges may incarcerate CSEC in order for them to receive the services and safety provided by Probation. Until DCFS improves its CSEC services and placement options, CSEC may continue to be criminalized even though detention may cause further trauma, shame, and isolation.

CSEC-Specific Courts

Currently, there are only two courts that are CSEC-specific: STAR Court in Compton and the Sylmar Juvenile Courthouse. Judges have important discretion in determining the sentencing, living placement, and services provided to CSEC. If judges are not trained to see CSEC as victims, their discretion may further criminalize minors and block them from receiving the necessary services for rehabilitation and reintegration. Limitations of only having two courts set up to manage CSEC cases include overburdened judges and geographic barriers for victims.

If judges send CSEC to a locked placement, the minor will be placed in the care of Probation. However, minors arrested for other crimes can also be identified as CSEC by Probation. In 2014, 45% of the clients in STAR Court were never arrested for prostitution, but they were identified as CSEC by Probation.

CSEC diverted to Department Child Family Services

If the minor already has a social worker, or if the law enforcement officer chooses to not arrest the minor but instead divert the minor to the Department of Child and Family Services (DCFS), the minor will become a dependent of the Juvenile Court rather than a delinquent and will not be detained.¹⁶ DCFS has only been able to assume legal jurisdiction or care over CSEC who are deemed dependents since June 2014 with the passage of Senate Bill 855 (SB 855). Prior to the

¹⁵Based on anecdotal evidence recounted by juvenile court judges.

¹⁶California's Welfare Institution Codes differentiate between dependents of juvenile court (WIC 300) who are under the care of DCFS, and delinquents of juvenile court (WIC 601) who are under the care of Probation.

passing of SB 855, children sexually exploited by a non-relative fell outside of the purview of DCFS. Now DCFS can serve as an alternative pathway to criminalization and detention for CSEC.

However, DCFS has been called “dysfunctional” and in a “state of emergency.”¹⁷ The Blue Ribbon Commission on Child Protection found DCFS struggles to deliver quality services with limited funding and currently operates by responding to crises, rather than proactively employing data and strategizing.¹⁸ The agency has underperformed in areas important to ensuring child safety and well-being such as placing children in safe foster facilities and providing children with access to mental health services.¹⁹ Communication among different departments within DCFS is limited, often negatively affecting the safety and services provided to minors.²⁰ Due to DCFS’ bureaucracy, limited transparency, and obscurity of procedures, it is challenging for outsiders and the public to evaluate the agency’s capacity and effectiveness. While seven people make up the dedicated CSEC unit in DCFS, three of them being CSEC specific social workers, DCFS currently does not have CSEC-specific therapeutic programs to reintegrate CSEC and reduce their flight risk from their placements.

Multi-Agency Response: First Responder Pilot Program

If minors are identified by law enforcement in Compton or Long Beach, they may be diverted to the First Responder Pilot Program. In 2014, Michelle Guymon, Director of Placement Administrative Services with Los Angeles County Probation Department, created the First Responder Protocol Pilot Program to alleviate the administrative burden on law enforcement agents when they pick up CSEC victims. This multi-agency response team protocol brings

¹⁷Foshay, Karen and Rina Palta. “Report: LA County must reform troubled DCFS.” *SCPR*, April 10, 2014. Retrieved from <http://www.scpr.org/news/2014/04/10/43420/report-calls-on-la-supervisors-to-implement-major/>.

¹⁸Ibid.

¹⁹Sanders, David. “Casey Family Programs report on Los Angeles County.” *SCPR*, December 19, 2007. Retrieved from <http://www.scribd.com/doc/217501529/Casey-Family-Programs-Vice-President-David-Sanders-report-on-Los-Angeles-County-DCFS>

²⁰Foshay, Karen and Rina Palta. “Report: LA County must reform troubled DCFS.” *SCPR*, April 10, 2014. Retrieved from <http://www.scpr.org/news/2014/04/10/43420/report-calls-on-la-supervisors-to-implement-major/>

together Probation, DCFS, victim advocates, and law enforcement to decide the best placement and case plan for CSEC victims.

Multi-agency decision-making is essential for CSEC placement because each minor has individual needs and may have history with the juvenile justice and child welfare systems. Since the multi-agency response pilot began, 90% of CSEC who go through the program have not gone back to their traffickers within the first 72 hours of being identified by law enforcement.²¹ Guymon notes that it will take years before the pilot can be fully expanded throughout the County because it requires proper coordination, increased capacity and additional resources from all agencies involved. However, on October 20, 2015, a component of the Board of Supervisor's passed motion is to "Encourage all relevant County agencies, including the Sheriff's Department, to implement the Law Enforcement First Responder Protocol."²² While vague, the Board of Supervisors' commitment to expand the program is promising so as to divert CSEC away from criminalization and instead into services provided by DCFS.

The Blue Ribbon Commission on Child Protection should work with Probation, law enforcement, the courts and DCFS to coordinate more rapidly and to collaborate so that the pilot can be expanded throughout the County sooner than Guymon's anticipated "few years." Expanding the pilot program will ensure CSEC are treated as victims rather than criminals because CSEC will be ushered into services rather than arrest and detention if they have not committed any other crime. This recommendation also prioritizes services for CSEC and considers which placement facilities are best for the minors.

In order for this protocol to be successful, DCFS would need to develop additional protocols to decrease the AWOL rate from their open placements, to evaluate the current caseload of CSEC-

²¹Michelle Guymon, in-person interview, February 2015. However, according to Kuehl and Knabe's board motion, the stabilization rate is closer to 70%.

Kuehl, Shelia and Don Knabe. "Revised Motion by Supervisors Shelia Kuehl and Don Knabe." October 20, 2015. <http://file.lacounty.gov/bos/supdocs/98488.pdf>

²²"Board Declares "No Such Thing" as Child Prostitution." *Supervisor Kuehl Website*. October 20, 2015. <http://supervisorkuehl.com/board-declares-no-such-thing-as-child-prostitution/>

specific social workers, to determine if additional CSEC-trained social workers would help rehabilitate CSEC, and to evaluate rehabilitative services offered to CSEC. There has been a proposal to add 542 social worker positions to DCFS. If this step were taken, it would decrease the overburdened caseloads of social workers, thereby providing CSEC more attention and care, if the proposal is approved.²³

Drop charges if services are completed: First Step Diversion Program

Established in February 2014, the Los Angeles District Attorney's First Step Diversion Program is carried out in partnership with Saving Innocence, CAST, YWCA, and the Valley Trauma Center so as to provide rehabilitative services to CSEC in the program.²⁴ Based on the discretion of a judge or prosecutor, the minor may be required to complete a diversion program in exchange for dropping the related charges. This model presumes the minors are criminals and requires a fairly strict burden of proof for CSEC to prove they are victims.

Diverting CSEC to programs in exchange for expunging charges pressures them with the threat of detention. Also, unencumbered access to services is not guaranteed, nor is funding for the services. Nevertheless, the CSEC Unit of DCFS considers this to be one of the better rehabilitative options for CSEC in LAC, though no formal research has been conducted to determine the program's effectiveness at helping CSEC leave "the life."²⁵

Housing Options for CSEC in Los Angeles County

CSEC are limited to three main housing options: 1) detention in juvenile detention centers, 2) locked placements through DCFS, and 3) open placements through DCFS and/or relatives. A fourth option to be considered is a geographically remote, open campus setting that would

²³Therolf, Garrett. "Proposed Budget Would Add 542 Child-welfare Workers in L.A. County." *Los Angeles Times*. 11 Apr. 2015. Web. <http://www.latimes.com/local/countygovernment/la-me-0411-social-workers-20150411-story.html>.

²⁴LA County Sheriff's Department. "DA Lacey Unveils New Program Aimed at Helping Young Victims of Sex Trafficking." *LASD.org*. N.p., 13 Feb. 2014. Web. <http://shq.lasdnews.net/pages/PageDetail.aspx?id=2064>.

²⁵Xiomara Flores-Holguin, in-person interview, February 2015.

physically distance minors from traffickers. Open placements mean CSEC are able to leave at any time. There are no locks on doors or adults who will physically restrain minors who attempt to leave.

Detention

Detention placements are those operated and managed by Probation, Juvenile Hall, and Probation Camps. The benefits of locked placements are that they keep CSEC safe from their trafficker and limit CSEC's ability to go AWOL and interrupt their treatment. However, the effectiveness of forcing individuals into treatment is lower, at least in studies regarding substance abuse, than when individuals choose voluntarily to engage in treatment on their own.

Locked placements can also be forms of re-victimization for CSEC because their agency and choice are taken away. Additionally, minors are still recruited by pimps and traffickers inside juvenile detention facilities.²⁶ A recent study of LAC's juvenile probation system showed the limited effectiveness of locked placements for the general population of juveniles deemed delinquent by the courts. A third of probationers are re-arrested within a year of their release.²⁷ However, for those in the field that believe AWOLing is part of the reintegration process of CSEC, locked placements with CSEC-specific services can begin to help CSEC realize their options beyond staying in "the life."

Locked Placements (Level 14 Placements)

Locked group homes in LAC, such as the level 14 placements, are for minors with extreme psychiatric challenges and mental health needs. The benefits of locked facilities are that they

²⁶Therolf, Garrett. "L.A. County Supervisors Debate Whether to Lock up At-risk Foster Youth." *Los Angeles Times*, 21 Mar. 2015. Web. <http://www.latimes.com/local/california/la-me-foster-prostitution-20150322-story.html#page=1>.

²⁷Therolf, Garrett. "1 in 3 L.A. County Youth Offenders Is Re-arrested within Year, Study Finds." *Los Angeles Times*, 26 Mar. 2015. Web. <http://www.latimes.com/local/lanow/la-me-ln-one-out-of-three-juvenile-offenders-are-arrested-within-one-year-of-release-20150326-story.html>.

prohibit CSEC from AWOLing and ensure that treatment is being administered to the minor. However, placing CSEC in locked facilities takes away their agency and works to re-criminalize the minors. Furthermore, there is no evidence that suggests CSEC will not return to “the life” after being placed in these types of facilities. DCFS did have Level 14 locked placements, however they are currently closed because of a pending legal suit.²⁸

Open Placements

Open placements assigned by DCFS, include group homes, foster families, and placements with relatives and/or legal guardians. The benefit of open placements is that CSEC are not forced against their will to be there, thereby decreasing additional trauma. However, prior to being recruited into “the life,” many CSEC were already living in group homes and foster placement. Thus, sending CSEC back to the housing from which they came, especially if that housing already failed to provide them the sense of family, security and community they were seeking, is questionable. CSEC’s desire to return to the open placements from which they originally left is likely to be low. Without being placed within a secure facility, they are likely to run away back to their trafficker and to the community to which they are most familiar.²⁹

Open placements are where most CSEC who have been detained via Probation will be placed upon being released. Thus, they are a necessity, especially given the shortage of foster homes available to foster youth in general, let alone CSEC. However, while in the care of DCFS, CSEC tend to go AWOL from their open placements.

AWOL Interventions

AWOLing, or running away from open placement is commonplace for CSEC because of their complex trauma bonds with their trafficker, their lack of freedom while at placement, a dearth

²⁸Xiomara Flores-Holguin, phone interview, February 2015.

²⁹Geist, D. (2011). Finding the Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors. *Legislation & Policy Brief*, 4. Retrieved from <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1038&context=lpb>

of activities to keep them occupied at open placements, a desire to return to what is known and comforting, and a lack of support and love at open placements. CSEC are also young adults and teenagers, without fully developed cognitive capabilities to weigh the full ramifications and consequences of their choices, such as running away from treatment and back to their trafficker.³⁰ Some scholars and advocates argue that AWOLing is part of the process of exiting from “the life” while others believe it interrupts the therapeutic process of breaking the bonds with their trafficker.³¹

Among the STAR court data sample, 89% of CSEC went AWOL from their first DCFS placement after being detained. The majority of STAR Court participants are placed in group homes: 59.3%. However, of those placed in group homes, 67.7% run away from their initial placement. Foster youth who go AWOL from placement tend to do so out of boredom, lack of freedom, or because they want to get in contact with friends and family.

The Vera Institute, which conducted a study of foster youth in New York City who frequently go AWOL, recommends open group homes to implement more activities and less down time for youth, encouraging staff to build relationships with youth, and providing clear opportunities for youth to see family, friends, and loved ones while staying at placement.³² Additional AWOL interventions are: 1) providing CSEC with survivor advocates, 2) offering alternative pathways to education, 3) facilitating victim empowerment classes, 4) addressing CSEC’s physical and mental health needs, and 5) offering job training programs.

³⁰“Developing Capacity” *Adolescent “Consent” at Work, at Law, and in the Sciences of the Mind*. (n.d.). Retrieved February 5, 2015, from <http://jjlp.law.ucdavis.edu/archives/vol-10-no-1/Consent.pdf>.

³¹Getting out: A Qualitative Exploration of the Exiting Experience Among Former Sex Workers and Adult Sex Trafficking Victims - ProQuest. (n.d.). Retrieved February 24, 2015, from <http://search.proquest.com/wallstreetjournal/docview/1528555080/fulltextPDF/D5638FC1B4A04D13PQ/36?accountid=14512>.

³²Finkelstein, Marni, Mark Wamsley, Dan Currie, and Doreen Miranda. *YOUTH WHO CHRONICALLY AWOL FROM FOSTER CARE Why They Run, Where They Go, and What Can Be Done* (n.d.): n. pag. Aug. 2004. Web. http://www.vera.org/sites/default/files/resources/downloads/Foster_AWOLs.pdf

Geographically Remote Placements

DCFS is in discussion about building a university-like setting in the Angeles National Forest for CSEC. While the placement would not be locked, its isolated geographic location would make it a barrier to AWOLing. UCLA Professor Mark Kleiman suggests using crime victim funds or prosecution funds to pay for the creation and operation of the building since those funds seem to have more flexibility than DCFS funds.³³ Out-of-state placements are also utilized for some CSEC who repeatedly go AWOL and do not have strong familial ties to LAC.

Demand Side: Johns

Johns, or adults who choose to engage in commercial sex with minors, come from all walks of life. There is no singular profile and little research has been conducted on identifying and understanding the motivations of johns.³⁴ The United Nations Office of High Commissioner for Human Rights (UNOHCHR) views demand as a root cause of sex trafficking.³⁵ Some argue reducing demand will reduce supply, whereas others argue sex trafficking, like prostitution, will always exist no matter the legislative efforts made.

The federal, state, or county governments can make, and have made, efforts to curb the demand side of sex trafficking of minors through legislation, penalties, awareness campaigns, shame campaigns, and education. While further research needs to be conducted to determine the most effective demand reduction strategies, based on our evaluative criteria, we recommend the following two measures for LAC: 1) a shame campaign, and 2) the creation of john schools.

³³Prof. Kleiman was advisor to the authors for the report on which this chapter is based.

³⁴Finklea, Kristin, Adrienne L. Fernandes-Alacantara and Alison Siskin. "Sex Trafficking of Children in the United States: Overview and Issues for Congress". *Congressional Research Service*. 28 Jan. 2015. p. 7

³⁵*Ibid.*, p. 34.

Shame Campaign

LA Supervisor Don Knabe proposed and passed a public shaming campaign of johns in December 2014.³⁶ However, there was supposed to be a report delivered to the Board of Supervisors 45 days later with the names of johns in LAC and apparently such a report was not prepared. Knabe and Supervisor Mark Ridley Thomas did try to build public support, raise awareness of the need for, and explain the effectiveness of public shaming through the publication of a letter to the editor in the *Los Angeles Times* shortly after the shaming policy was enacted.³⁷ There has been pushback in other California jurisdictions that have tried this strategy such as Richmond.³⁸ Such resistance may explain why the shame campaign has yet to be implemented.

To implement a shame campaign of johns, activist organizations should pressure the LAC Board of Supervisors to follow through with its plan. Pushing for the implementation of the campaign is a feasible option because the board unanimously approved the policy. Further research on the part of activist organizations, such as the Coalition to Abolish Sex Trafficking (CAST), the public, and local news media should be conducted to understand why the campaign is stalled. This strategy is easy to implement in the near future and could be an effective way to deter demand.

John Schools

John schools have proven to be successful at reducing recidivism among exploiters. The San Francisco First Offender Prostitution Program (FOPP) had an extremely small re-arrest rate for

³⁶Knabe, Don. "Los Angeles County Board of Supervisors Motion for Shame Campaign". 9 Dec. 2014

³⁷Ridley Thomas, Mark, and Don Knabe. "L.A. Must Do All It Can for Sex-trafficking Victims." *Los Angeles Times*, 16 Dec. 2014. Web. 20 Feb. 2015. <http://www.latimes.com/opinion/readersreact/la-le-1217-wednesday-prostitution-johns-20141217-story.html>.

³⁸Klarich, Stephen. "LA County Latest to Start Shaming Those Who Pay Prostitutes." *Wksexcrimes.com*. N.p., 08 Jan. 2015. Web. 20 Feb. 2015. <http://www.wksexcrimes.com/la-county-latest-start-shaming-pay-prostitutes/>.

johns in the program.³⁹ “Of the 2,200 men who attended FOPP between 1997 and 2001, only eighteen were rearrested for soliciting prostitutes”.⁴⁰ The curriculum was built around educating the offenders about the abuses women and minors endure from their traffickers, the profits of the traffickers, the health hazards of soliciting commercial sex, and how the demand from the exploiters perpetuates the abuse, trafficking and exploitation of the victims.⁴¹

There are currently 53 US cities with functioning john schools, including LAPD 77th Division in South LA which offers john classes once a month.⁴² Operating costs are funded by fines borne by the johns which range from \$150-\$1,500.⁴³ San Francisco’s FOPP raised over \$3 million in fines since its inception.⁴⁴ Some schools funnel a portion of the money to survivor programs as well.⁴⁵ Establishing more john schools in LAC is a feasible option especially given LAC’s growing number of CSEC.

While advocates have pushed for increased attention and penalties for johns, there has still not been a massive crackdown on their activity because it is not a priority of law enforcement or the judiciary. Amy Farrell, an expert in sex-trafficking laws argues that “prosecutors are reluctant to pursue prosecution against johns because it’s not been politically expedient to do so in many communities.”⁴⁶ Reverse sting operations are another strategy. However it requires

³⁹Yen, Iris. “Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand through Educational Programs and Abolitionist Legislation”. *The Journal of Criminal Law and Criminology* vol. 98, No. 2 (Winter 2008), pp. 677.

⁴⁰Ibid., p. 677.

⁴¹Ibid., p. 676

⁴²“John School Overview from National Assessment.” *Demandforum.net*. N.p., n.d. Web. 03 Mar. 2015. <http://www.demandforum.net/wp-content/uploads/2012/01/john-school-overview-from-national-assessment.pdf>.

“Reducing Demand Prostitution through Johns School.” *SCPR*.

<http://www.scpr.org/news/2012/07/10/33182/reducing-demand-prostitution-through-johns-school/>.

⁴³“John School Overview from National Assessment.” *Demandforum.net*. N.p., n.d. Web. 03 Mar. 2015. <http://www.demandforum.net/wp-content/uploads/2012/01/john-school-overview-from-national-assessment.pdf>.

⁴⁴Abt. Associates. “National Overview of Demand Reduction Efforts.” Submitted to the US Department of Justice. June 2012.

⁴⁵Ibid

⁴⁶“Courts Take a Kinder Look at Victims of Child Sex Trafficking.” NPR. (n.d.). Retrieved February 24, 2015, from <http://www.npr.org/2014/03/01/284487140/courts-take-a-kinder-look-at-victims-of-child-sex-trafficking>.

female law enforcement agents to pose as CSEC, which can be dangerous and dependent on the number of female officers available. It is unconscionable to allow adults to engage in statutory rape of minors for the adults' own carnal pleasure. Efforts need to be taken at the LAC and state level to ensure the protection of CSE minors and to curb demand of the exploiters.

Demand Facilitators: Pimps

It is well known within the criminal justice community how difficult it is to prosecute pimps. There are several variables that lead to this difficulty: (a) Pimps are not in plain sight when the minors are soliciting; they will usually be in a car across the street monitoring or around the corner just quick phone call away. (b) Pimps have coerced CSEC into being loyal and scared so as to not testify against the pimp. CSEC typically have Stockholm Syndrome, believe they are in love with the pimp, consider the pimp to be their real family, and/or feel grateful or indebted to the pimp. (c) The pimp will threaten the minor with various corporal punishments, the most extreme being the death of the minor or someone that is close to the minor. (d) Even when minors do agree to testify, they are required to give their testimony against their pimp in open court, an intimidating undertaking. The pimps further intimidate the minor by filling the courtroom with their associates. Due to the expansive nature of sex trafficking federal legislation, it is easier to federally prosecute pimps as opposed to doing so at the state level.

Apply *Operation Ceasefire* to Reduce Trafficking

Gangs are often involved in pimping. To disincentivize sex trafficking of minors, LAPD and LAC Sheriff's Department's gang units could mimic criminologist David Kennedy's *Operation Ceasefire* method of delivering a clear message to the gangs – do not pimp minors. Any noncompliance would lead to the arrest and prosecution of everyone in that gang. This intervention is effective when there is high buy in and involvement of law enforcement, community organizations, prosecutors, and probation officers. Kennedy's model has already

been successfully applied to LAC in 2000 when the researcher worked with LAPD Chief Beck to substantially decrease gang related shootings.⁴⁷

To apply *Operation Ceasefire* to sex trafficking of minors in LAC, a law enforcement task force would identify the gang members most active and violent in trafficking. Law enforcement would want to target the most active trafficking perpetrators. Once the core offenders are identified, law enforcement would observe and start to gather evidence on their involvement in all crimes. Instead of arresting and prosecuting the individuals straightaway, this task force would call a “notification meeting” in which the gang members would be notified that in addition to shooting, the trafficking of minors is no longer going to be tolerated. Any further trafficking of minors will lead to “certain arrest and prosecution [of all of those who the team has gathered evidence against] and because of the agreement of federal law enforcing agencies to be involved, lengthy federal prison sentences would be delivered [against those in that gang].”⁴⁸

Additionally, an exit path should be offered for pimps/traffickers who are looking to leave “the life” themselves. If the provision of a “clean” job among other social services is enough to change the behavior of these individuals, then that is exactly what should be offered to them. However, many of the traffickers do not have formal job experience and may not be open to mainstream alternatives. The specialized task force must ensure that when they do begin this process that the message is clear: trafficking of minors will not be tolerated; if you want a clean way out you must speak to the task force now.

The task force would set a time limit of 3-6 months to investigate gangs involved in sex trafficking of minors. The gang in which the task force has been able to identify the largest number of minors who are commercially sex trafficked will have the full force of arrest and

⁴⁷Kennedy, David M. *Don't Shoot: One Man, a Street Fellowship, and the End of Violence in Inner-city America*. New York: Bloomsbury USA, 2011.

⁴⁸*Ibid.*

prosecution. This process keeps repeating until it becomes unattractive within the gangs to commercially traffic minors because of the severity of the consequences.

Conclusion

This report is focused on dismantling the current ecosystem that sustains the LAC sex trafficking market by changing the incentive structure on both the demand side (johns and pimps) and supply side (CSEC). Based on expert interviews, a review of relevant literature, evaluation of STAR Court case files, and comparative analysis of models across the United States and the globe, we recommend measures to disrupt the demand side and develop interventions to disincentivize sex trafficked minors from returning to “the life.”

Due to law enforcement at the Los Angeles District Attorney’s de-prioritization of prosecuting johns under California law, we recommend the following interventions to incentivize johns and would-be johns to change their behavior: 1) john schools and 2) shame campaigns. Continuing the funding for john schools is our high priority recommendation due to the success of such programs at reducing recidivism among exploiters. Additionally, we recommend shame campaigns to discourage johns with threat of public humiliation.

Gangs traffic minors for sex due to the high profitability and low risk of detection. There is currently a window of opportunity to discourage gangs from engaging in sex trafficking through Operation Ceasefire. By implementing interventions that work to rehabilitate CSEC and providing them with marketable skills to build their self-efficacy, previously sex trafficked minors can receive uninterrupted restorative services to break the bonds with their traffickers and find a new role in mainstream society.

To coordinate efforts better, LAC should create and implement an integrative data system shared by Probation, law enforcement, DCFS, courts, and group homes. The data system will not only allow all agencies to better track minors who are CSE, but also to evaluate the efficacy of services currently provided to minors. Training should also be offered to all adults working

with CSEC such as teachers, emergency room workers, judges, and social workers, not only for these adults to see CSEC as victims, but also to stabilize CSEC and reduce their tendency to return to their traffickers. CSEC victims are a high flight risk from their placements and often return to their trafficker as a result of their complex trauma. Traffickers threaten victims by saying they will kill, beat, or rape them if they do not escape from their placements within two hours. In order to reduce and/or prevent CSEC victims from AWOLing, stakeholders need to be trained to stabilize minors and to have protocols in place to reduce the ease of AWOLing.

While halting sex trafficking of minors is a daunting task, adoption of our recommendations could lead to a substantial reduction in a major social problem.